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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 364

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF NORTH DAKOTA, C. W. McDONNELL, FAY HARDING, ET AL., ETC., APPELLANTS,

vs.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NORTH DAKOTA

FILED AUGUST 31, 1929

(34,495)

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IN UNITED STATES DISTRICT COURT, DISTRICT OF NORTH DAKOTA, SOUTHWESTERN DIVISION

No. 459

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Chicago, Milwaukee, St. Paul & Pacific Railroad Company, and Farmers Grain and Shipping Company, Plaintiffs,

vs.

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF NORTH Dakota, and C. W. McDonnell, Fay Harding, and Ben C. Larkin, as Members of and Constituting said Board, and James Morris, as Attorney General of the State of North Dakota, Defendants.

BILL OF COMPLAINT—Filed June 25, 1929

To the Honorable the Judges of the District Court of the United States for the District of North Dakota, Southwestern Division:

Great Northern Railway Company, Northern Pacific Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Chicago, Milwaukee, St. Paul & Pacific Railroad Company, and Farmers Grain and Shipping Company bring this, their bill of complaint, against the Board of Railroad Commissioners of the State of North Dakota, and C. W. McDonnell, Fay Harding and Ben C. Larkin as members of and constituting said Board, and James Morris as Attorney General of the State of North Dakota, and thereupon complain and allege:

I

This is a suit arising under the constitution and laws of the United States, particularly under the commerce clause of the Constitution and the Fourteenth Amendment thereof, and the Act of Congress known as the Interstate Commerce

Act, and involves, exclusive of interests and costs, over $3,000.00 as between each one of the plaintiffs and the said defendants.

II

The Great Northern Railway Company is a corporation created and existing under and by virtue of the laws of the state of Minnesota; Northern Pacific Railway Company is a corporation created and existing under and by virtue of [fol. 3] the laws of the state of Wisconsin; Minneapolis, St. Paul & Sault Ste. Marie Railway Company is a corporation created and existing under and b- -irtue of the laws of the states of Minnesota, Wisconsin, Michigan, and the Territory of Dakota; Chicago, Milwaukee, St. Paul & Pacific Railroad Company is a corporation created and existing under and by virtue of the laws of the state of Wisconsin; and Farmers Grain and Shipping Company is a corporation created and existing under and by virtue of the laws of the state of North Dakota; that all of said plaintiffs are common carriers of freight by rail in intrastate commerce in the State of North Dakota and in interstate commerce to, from and through the state of North Dakota and various other states.

III

C. W. McDonnell, Fay Harding, Ben C. Larkin and James Morris are each citizens of the state of North Dakota and residents within the said district and division. C. W. McDonnell, Fay Harding and Ben C. Larkin are the members of and constitute the Board of Railroad Commissioners of the state of North Dakota, which is a board or commission created and existing by virtue of the laws of the state of North Dakota. Defendant James Morris is Attorney General of the state of North Dakota.

IV

Among powers intrusted to said Board of Railroad Commissioners by the laws of the state of North Dakota, and particularly by Section 4728 of Compiled Laws of North Dakota, 1913, and Section 4795a6 of Supplement to 1913 Compiled Laws or North Dakota, is the power to fix lawful rates and charges for the transpor-

tation of freight between points in the state of North Dakota. The Board is required to fix rates that are just, reasonable and non-discriminatory and may lawfully alter or amend any rate previously established. Any failure or refusal by any railroad company to comply with the order of the said Board of Railroad Commissioners prescribing rates for the intrastate transportation of freight would, under Section 4737, Compiled Laws, 1913, constitute a misdemeanor and would subject such railroad to a penalty of not less than five hundred dollars nor more than five thousand dollars for each offense, and in addition thereto under Section 4734, Compiled Laws, 1913, would subject said railroad to liability in the amount of three times the [fol. 4] damage sustained through such failure to comply with said orders by any person injured by such failure or refusal to comply, together with costs and a reasonable attorney's fee. It is made the duty of the Board of Railroad Commissioners by Sections 589 and 590 of the Compiled Laws of North Dakota, 1913, to inquire into any neglect or violation of the laws of the State of North Dakota, including said sections 4734 and 4737, Compiled Laws, 1913, by any railroad, and to enforce the laws of the state relating to railroads.

The Attorney General of the state of North Dakota is by Sections 595 and 600 of the Compiled Laws of North Dakota, 1913, made ex officio Attorney for the Board of Railroad Commissioners and required to give it such counsel and advice as it may require and as shall be necessary to *to* carry out the provisions of any law of the State, and is required to institute and prosecute any actions which the said Board may deem proper and expedient.

V

On May 8, 1929, said Board entered an order in a proceeding pending before the Board, requiring these plaintiffs to make reductions in certain class rates for intrastate transportation on their lines of railroad in North Dakota. Plaintiffs seek to enjoin defendants from putting into effect and enforcing said class rates prescribed in said order.

VI

Prior to August 26, 1920, the same scale of class rates applied intrastate in North Dakota and interstate between Minnesota, North Dakota and South Dakota, except that from Minneapolis, St. Paul and Duluth to North Dakota points the rates were slightly lower for corresponding distances. On August 26, 1920, the interstate class rates to, from and through North Dakota were advanced in some instances 35% and in other instances 33⅓%, pursuant to authority granted to plaintiffs by the Interstate Commerce Commission on July 29, 1920, in a proceeding known as Ex Parte 74 (Increased Rates, 1920, 58 I. C. C. 220), in which proceeding the Interstate Commerce Commission authorized a general advance in freight rates throughout the United States.

Plaintiffs applied to the Board of Railroad Commissioners of North Dakota for authority to make increases in the North Dakota intrastate rates, including class rates, to correspond with the said increases which they had made in [fol. 5] the interstate class rates. On December 14, 1920, the Board of Railroad Commissioners of North Dakota, in its Case No. 1592 denied this application, thus leaving the interstate class rates on a very much higher level than the intrastate class rates in North Dakota. Thereupon the Interstate Commerce Commis-ion, upon application of the plaintiffs herein, instituted a proceeding before that body under Section 13 of the Interstate Commerce Act which prohibits undue or unreasonable advantages, preferences or prejudices as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, and undue, unreasonable or unjust discrimination against interstate or foreign commerce. The Interstate Commerce Commission on May 3, 1921, in said proceeding, Docket 12,085 (North Dakota Rates, Fares and Charges, 61 I. C. C. 504), made a finding that the interstate rates referred to, including class rates which were established by plaintiffs as a result of the decision in Ex Parte 74, resulted in reasonable rates and charges for interstate transportation and that the failure to correspondingly increase the intrastate rates within the state of North Dakota, including the class rates, "has resulted and will

result in intrastate rates and charges lower than the corresponding rates and charges maintained on interstate traffic within the state of North Dakota, and between points in the State of North Dakota, and points in other states, in undue preference of and advantage to shippers of intrastate traffic within the state of North Dakota, in undue prejudice to shippers of interstate traffic, and in unjust discrimination against interstate commerce." The Interstate Commerce Commission made a further finding that said undue preference, undue advantage and prejudice, and unjust discrimination in violation of Section 13 of the Interstate Commerce Act, can and should be removed by making increases in the North Dakota intrastate rates, including class rates, which will correspond with the increases theretofore made by the plaintiffs in the interstate rates under Ex Parte 74. On the same date the Interstate Commerce Commission entered an order in said Docket 12,085 requiring plaintiffs herein to make the same percentage advances in the intrastate freight rates in North Dakota, including the class rates, as the plaintiffs made in the interstate rates under Ex Parte 74. Plaintiffs herein made such increases in the North Dakota intrastate class and other freight rates effective May 27, 1921, and thereupon the relationship [fol. 6] between the North Dakota intrastate class rates and the interstate class rates which existed prior to August 26, 1920, was restored.

VII

Thereafter, on June 5, 1922, said Board of Railroad Commissioners of North Dakota entered an order in its case No. 1592 reciting, among other things, that the said order of the Interstate Commerce Commission of May 3, 1921, in Docket 12,085 "practically deprived this Commission of its power to regulate intrastate rates, fares and charges of the common carriers herein involved"; and that "appropriate action should be taken to terminate the disability of the state of North Dakota and the Board of Railroad Commissioners of North Dakota," and the said order of the Board of Railroad Commissioners of North Dakota dated June 5, 1922, ordered that all the intrastate rates established by the plaintiffs herein as a result of the Interstate Commerce Commission's order in Docket 12,085 "be continued in force and effect until revoked, modified or superseded by appro-

priate lawful proceedings before this Commission or as otherwise provided by law," and that a copy of said order be served on the Interstate Commerce Commission "with appropriate application for the rescinding of its order in North Dakota Rates, Fares and Charges, Docket 12,085."

Thereafter the Board of Railroad Commissioners of North Dakota filed such an application with the Interstate Commerce Commission and that commission on July 22, 1922, entered its further order in said Docket 12,085, reciting that if the Interstate Commerce Commission's order of May 3, 1921, were vacated "the existing increased intrastate rates and charges for freight services in said state will continue in force and effect until revoked, modified or superseded by appropriate lawful proceedings before said Board or as otherwise provided by law," and vacating its order of May 3, 1921, insofar as it related to intrastate freight rates in North Dakota. Thereupon the Board of Railroad Commissioners of North Dakota regained jurisdiction over the intrastate rates to the extent permitted by law under the circumstances.

VIII

The interstate class rates referred to, and the North Dakota intrastate class rates which the Interstate Commerce Commission established by its order of May 3, 1921, to avoid an unlawful discrimination against interstate commerce, are still in effect except (1) that effective July 1, 1922, the in- [fol. 7] terstate class rates were reduced 10% pursuant to findings of the Interstate Commerce Commission in Reduced Rates, 1922, 68 I. C. C. 676, and the plaintiffs herein made a corresponding reduction of 10% in the North Dakota intrastate class rates effective the same date; and (2) that effective September 11, 1925, as a result of the Interstate Commerce Commission's findings and order in its Docket 13,839, Commercial Club of Fargo v. A. W. Ry. Co., et al., 98 I. C. C. 691, the interstate class rates from Fargo, N. D., to points in Minnesota within a radius of 150 miles of Fargo were increased and the interstate rates from Minneapolis, St. Paul and Duluth to Fargo were increased and to Jamestown and Valley City, N. D., were increased for some classes and reduced for others.

IX

On March 12, 1925, the Interstate Commerce Commission instituted a proceeding before that body designated as Docket 17,000, Rate Structure Investigation, to determine to what extent, if any, any interstate rates of any carrier in the United States subject to its jurisdiction were unjust, unreasonable, unjustly discriminatory or unduly preferential, and to determine "to what extent and in what manner, if any, the rates, as above defined, of such common carriers cause undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand, and interstate or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce." Subsequently the Interstate Commerce Commission entered into extended hearings in said proceeding, particularly with respect to the class rates. The relationship that shall prevail between the North Dakota intrastate class rates and the interstate class rates in order to avoid a violation of Section 13 of the Interstate Commerce Act is in issue in said Docket 17,000. The plaintiffs herein and the Board of Railroad Commissioners of North Dakota appeared and participated in that proceeding and introduced evidence relating to that issue, the case was submitted to the Interstate Commerce Commission on briefs the latter part of 1928 and a decision may reasonably be expected some time during the year 1929.

[fol. 8]

X

On May 29, 1925, the Board of Railroad Commissioners of North Dakota instituted Case No. 2255, an investigation upon their own motion before that body for the purpose of determining to what extent, if any, the North Dakota intrastate rates may be unjust, unreasonable, unjustly discriminatory or unduly preferential, and made the plaintiffs herein respondents. Hearings were had in this proceeding and on September 2, 1927, the Board of Railroad Commissioners entered an order in that proceeding which provided with respect to the intrastate class rates that the record should be held open for further hearing after the Interstate Commerce Commission renders a decision in Docket 17,000,

Rate Structure Investigation, in which is in issue the interstate class rates and the relationship between those rates and the North Dakota intrastate class rates. On January 28, 1928, the Board of Railroad Commissioners of North Dakota reopened its general investigation, Case No. 2255, insofar as it related to class rates and certain other rates, and a further hearing was had therein in connection with the hearing in its Case 2875, a proceeding in which the Board suspended certain tariffs of the plaintiffs publishing changes in certain North Dakota intrastate class rates as a result of a requirement contained in the North Dakota Railroad Commission's order in Case 2255, dated September 2, 1927.

On May 8, 1929, the Board of Railroad Commissioners of North Dakota entered its further order in its general investigation, Case No. 2255, and in the said suspension proceeding, Case No. 2875, (a true and correct copy of which order of May 8, 1929, is hereto attached, marked "Exhibit A"), requiring, among other things, the establishment of a scale of distributing or jobbing class rates 10% lower than the existing class rates, which said distributing or jobbing class rates to apply between all jobbing or distributing points in North Dakota, and to and from such distributing or jobbing points, and to apply as maxima at intermediate points. Said order of May 8, 1929, as a result of a supplemental order of May 18, 1929, is made effective July 1, 1929, on not less than three days' notice to the Board of Railroad Commissioners of North Dakota and to the public by filing and posting of tariffs in the regular manner.

Plaintiffs seek to enjoin the defendants from putting into effect and enforcing the scale of distributing or jobbing class rates required by said order of May 8, 1929.

[fol. 9] XI

More than 90% of all North Dakota intrastate traffic which moves on class rates would move on the jobbing or distributing scale of class rates prescribed in said order of May 8, 1929, if such rates were established. Approximately 80% of all North Dakota intrastate traffic which moves on class rates moves on classes 1, 2, 3, and 4; and more than 85% of all North Dakota intrastate traffic which moves on class rates moves for distances under 160 miles.

Compliance with said order of May 8, 1929, of said Board would result in a scale of jobbing or distributing class rates for intrastate application in North Dakota more than 10% below the scale of class rates now generally applicable on the lines of plaintiffs between Minnesota, North Dakota and South Dakota in interstate commerce.

It will result in a scale of distributing or jobbing class rates for intrastate application in North Dakota which is substantially lower than the interstate class rates now in effect from Minneapolis, St. Paul and Duluth to North Dakota points (some of which interstate rates were prescribed by the Interstate Commerce Commission in the Fargo case, Docket No. 13,839), with the exception that the intrastate distributing or jobbing rates required by said order of May 8, 1929, are somewhat higher than the said class rates from Minneapolis, St. Paul and Duluth to North Dakota points for some distances over 230 miles and for Classes 5, B. C. D. and E, which classes move only a small percentage of the traffic moved on class rates.

It will result in a scale of jobbing or distributing class rates for intrastate application in North Dakota which is substantially lower for classes 1, 2, 3, 4 and A, which classes move a large amount of the traffic taking class rates, than the so-called Fargo scale of class rates prescribed by the Interstate Commerce Commission in Docket 13,839 for application from Fargo to points in Minnesota within a radius of 150 miles, and for application from certain jobbing points in Minnesota to Minnesota destinations. The jobbing or distributing scale of class rates prescribed by the Board of Railroad Commissioners of North Dakota are higher than the said Fargo scale for a comparatively few distances with respect to Classes 5th, B. C. D, and E.

[fol. 10] The present class rates for interstate transportation between North Dakota and Montana on plaintiffs' lines are now higher than the North Dakota intrastate class rates and the North Dakota intrastate class rates and the North Dakota Board's order of May 8, 1929, will result in making the North Dakota intrastate rates very substantially below the interstate scale of class rates applying between Montana and North Dakota.

The order of the Board of Railroad Commissioners of North Dakota will result in a very substantially more favorable relationship of intrastate class rates in North Dakota

to the interstate class rates to, from and through North Dakota than the relationship which the Interstate Commerce Commission found in its Docket 12,085 (61 I. C. C. 504) should exist in order to avoid a violation of Section 13 of the Interstate Commerce Act.

Establishing a distributing or jobbing scale of class rates in compliance with the said order of May 8, 1929, will reduce the net revenues of the plaintiffs herein at least $118,000 per annum.

Said interstate and intrastate class rates are interrelated and interdependent. The said order of May 8, 1929, of the Board of Railroad Commissioners of North Dakota is violative of paragraph (4) of Section 13 of the Interstate Commerce Act (Act of Congress of February 4, 1887, as amended by the Act of June 18, 1910, and Act of February 28, 1920 (49 U. S. C. A., Section 1), which expressly forbids the establishment by state authorities of intrastate rates which cause an unjust discrimination against or burden upon interstate commerce.

The intrastate distributing or jobbing scale of class rates prescribed by the Board of Railroad Commissioners of North Dakota is unreasonably low and would require shippers in interstate commerce to pay substantially higher rates to make up the losses of the plaintiffs in connection with freight moving on North Dakota intrastate class rates, resulting in an undue, unreasonable and unjust discrimination against interstate commerce generally. The said intrastate class rates prescribed by the Board of Railroad Commissioners of North Dakota would cause undue and unreasonable advantage and preference to North Dakota shippers and receivers of freight and to North Dakota localities engaged in intrastate commerce, and in undue and unreasonable prejudice to shippers and receivers of freight in interstate commerce and to localities engaged in interstate commerce, in that the former will enjoy substantially lower rates for hauls of similar commodities for the same distances under substantially similar conditions. Said reduced [fol. 11] North Dakota intrastate class rates will tend to prevent the movement of freight on class rates from Minnesota and other states to North Dakota points in competition with similar freight moving at lower rates for the same distances intrastate in North Dakota. The lower intrastate

class rates prescribed by the Board of Railroad Commissioners of North Dakota will result in shippers from North Dakota points to points in adjoining states near the North Dakota border billing their freight to the last station in North Dakota and then trucking the shipments across the state line to destination. The lower intrastate class rates will result in shippers from points in other states near the North Dakota state line draying their shipments across the state line and making them from the first sta-ion in North Dakota to the North Dakota destination. Such practices will in many instances result in destroying interstate commerce and in defeating lawful interstate rates for transportation between points in North Dakota and points in other states, and in unjustly preferring persons and localities in North Dakota intrastate commerce and in unjustly prejudicing persons and localities engaged in interstate commerce.

XII

These plaintiffs since the issuance of the order of May 8, 1929, by the North Dakota Board of Railroad Commissioners have filed a petition with the Interstate Commerce Commission to proceed under Section 13 of the Interstate Commerce Act to determine whether or not said scale of class rates required by the North Dakota Board's order of May 8, 1929, will unjustly discriminate against persons and localities in interstate commerce or constitutes a burden on interstate commerce. Plaintiffs alleged in their petition that the said scale required by the North Dakota Board does unjustly discriminate against persons and localities in the interstate commerce and is an unreasonable burden on interstate commerce in violation of Section 13 of the Interstate Commerce Act, and plaintiffs asked in said petition that the Interstate Commerce Commission institute an early investigation with respect to the matters and things set forth in said petition and that the Commission in said proceeding terminate and prohibit such discriminations and preferences by prescribing the class rates to be charged by these plaintiffs for intrastate transportation in North Dakota. When said matter is set down for hearing by the Interstate Commerce Commission all interested parties can appear and present evidence and all the facts

as to both intrastate and interstate rates can be submitted [fol. 12] to the body which, under the Constitution and laws of the United States, has authority to determine these questions. Said petition of these plaintiffs is pending before the Interstate Commerce Commission in addition to the said proceeding known as Rate Structure Investigation Docket 17,000, heretofore referred to, in which the question of whether the North Dakota intrastate rates are violative of Section 13 of the Interstate Commerce Act is in issue and in which the Interstate Commerce Commission has the power and authority to prescribe North Dakota intrastate class rates which will avoid undue discrimination and prejudice against interstate commerce.

In the event the intrastate scale of class rates prescribed by the North Dakota Board goes into effect on July 1, 1929, and continues in effect until the Interstate Commerce Commission renders a decision in the said proceeding which plaintiffs have petitioned the Interstate Commerce Commission to institute under the provisions of Section 13 of the Interstate Commerce Act, or until the Interstate Commerce Commission renders a decision in its pending proceeding entitled Rate Structure Investigation, Docket 17,000, plaintiffs will suffer irreparable loss and injury if the scale of intrastate class rates prescribed by the North Dakota Board in its order of May 8, 1929, is ultimately found by the Interstate Commerce Commission to result in an undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or in undue, unreasonable or unjust discrimination against interstate or foreign commerce, and if the Interstate Commerce Commission prescribes a scale of class rates for intrastate application in North Dakota which is higher than the scale prescribed by the Board of Railroad Commissioners of North Dakota.

XIII

The defendants threaten and intend, after the first day of July, 1929, to commence numerous proceedings and prosecutions both for equitable or mandatory or other relief and for a multiplicity of penalties in order to force the plaintiffs to charge and collect the scale of class rates

prescribed by the order of May 8, 1929, unless plaintiffs voluntarily file new tariffs and put such rates into effect. The proceedings contemplated and threatened by defendants will subject plaintiffs to multitudinous and vexatious suits both for injunctive or mandatory and other relief and [fol. 13] for fines and penalties, and would, if such proceedings be permitted, prevent plaintiffs, their officers and employees, from obeying the mandate of the Interstate Commerce Act against unlawful discriminations and would directly interfere with and burden interstate commerce. Plaintiffs allege that the penalties for failure to put into effect the rates prescribed in said order of May 8, 1929, are so severe as to compel compliance though plaintiffs are convinced that such rates will ultimately be found unlawful; that said penalties are so large as to deny plaintiffs the equal protection of the law and deprive them of their property without due process of law. Plaintiffs allege that they are without a plain, adequate and complete remedy at law.

Wherefore, inasmuch as the plaintiffs are remediless by the strict rules of the common law and only relievable in equity, the plaintiffs pray:

That the defendants, Board of Railroad Commissioners of the State of North Dakota, and C. W. McDonnell, Fay Harding, and Ben C. Larkin, as members of and constituting said Board, and James Morris, as Attorney General of the state of North Dakota, be required to make full and direct answer to this bill of complaint (but not under oath, answer under oath being expressly waived);

That defendants C. W. McDonnell, Fay Harding and Ben C. Larkin, as members of and constituting the Board of Railroad Commissioners of North Dakota, be enjoined and restrained from putting into effect said order of May 8, 1929, insofar as it relates to the establishment of a jobbing or distributing scale of class rates, and that said defendants be required to suspend said order and any tariffs prescribing said rates.

That defendants C. W. McDonnell, Fay Harding and Ben C. Larkin, as members of and constituting the Board of Railroad Commissioners of North Dakota, and James Morris, as Attorney General of the state of North Dakota, be enjoined and restrained from bringing any action or

proceeding of any sort whatsoever to enforce said new scale of rates or to hinder or obstruct or prevent the charging and collection by plaintiffs of the existing scale of class rates for intrastate application in North Dakota;

That said defendants be so enjoined and restrained until and only until the Interstate Commerce Commission has determined in said Docket 17,000, or in said Section 13 proceeding which plaintiffs petitioned the Interstate Commerce Commission to institute, whether the intrastate distributing or jobbing scale of class rates prescribed in said [fol. 14] order of May 8, 1929, causes any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce under Section 13 of the Interstate Commerce Act, or until said proceedings are finally determined, unless it be determined in said proceedings, or either of them, by the Interstate Commerce Commission that the proposed scale or rates does unlawfully discriminate against interstate commerce or persons and localities in interstate commerce and the Interstate Commerce Commission directs the establishment or permits the establishment of intrastate rates on a higher basis than the scale required by the Board of Railroad Commissioners of North Dakota, in which event plaintiffs pray that said defendants and their respective successors in office be perpetually enjoined and restrained from enforcing the scale of rates provided for in said order of May 8, 1929;

That defendants C. W. McDonald, Fay Harding and Ben C. Larkin, as members of and constituting the Board of Railroad Commissioners of North Dakota, and James Morris, as Attorney General of the State of North Dakota, be perpetually enjoined and restrained from instituting any proceeding to subject the plaintiffs to the penalties provided in section 4737, Compiled Laws 1913, or by any other section of said Compiled Laws or statute of the State of North Dakota, for failure to comply with said order of May 8, 1929;

That an interlocutory injunction be issued restraining the defendants, and each of them, as prayed, during the

pendency of this action; and that a temporary restraining order be issued restraining the defendants, and each of them, until the hearing and determination of the application for an interlocutory injunction;

That plaintiffs have such other and further relief in the premises as the needs of the case shall require and to your Honors shall seem meet; and may it please your Honors to grant also to plaintiffs a writ of subpœna to be directed to the said Board of Railroad Commissioners of North Dakota and to C. W. McDonnell, Fay Harding and Ben C. Larkin, as members of and constituting said Board, and James Morris, as Attorney General of the state of North Dakota, and each of them, commanding them and each of [fol. 15] them to appear and make answer to plaintiffs' bill of complaint at a certain time, and to abide the further order of the Court.

Dated June 20, 1929.

D. F. Lyons, F. J. Gehan, J. N. Davis, A. H. Lossow, Lawrence, Murphy & Nilles, F. G. Dorety, R. J. Hagman, Solicitors for Plaintiffs.

[fol. 16] *Duly sworn to by B. W. Scandrett. Jurat omitted in printing.*

[fol. 17] EXHIBIT A TO BILL OF COMPLAINT

BOARD OF RAILROAD COMMISSIONERS, STATE OF NORTH DAKOTA

Case No. 2255

In the Matter of Investigation, Upon the Commission's Own Motion, Into the Freight Rates, Classifications, Rules, Regulations, Charges, and Practices of the Railroads Serving North Dakota, Applicable to All Commodities Moving in Carload and/or Less-than-carload Lots Intrastate Between Points Within the State of North Dakota

Supplemental Findings of Fact and Conclusions

Case No. 2875

In the Matter of Suspension and Investigation of CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY (H. E. Byram, Mark W. Potter and Edward J. Brundage, Receivers), Supplement No. 6 to N. D. R. C. No. 88 and Supplement No. 1 to N. D. R. C. No. 94; GREAT NORTHERN RAILWAY COMPANY, Supplement No. 2 to N. D. R. C. No. 79; NORTHERN PACIFIC RAILWAY COMPANY, Supplement No. 3 to N. D. R. C. No. 167; Supplement No. 2 to N. D. R. C. No. 200, Publishing Increased Freight Rates on Classes and Commodities Intrastate Between Stations in North Dakota, Filed to Become Effective November 28, 1927

Findings of Fact and Conclusions

Schedules under suspension in Case No. 2875 found not justified and ordered cancelled.

Certain other changes in class rates ordered.

Appearances:

As stated in the original report in Case No. 2255 with the following additions:

F. V. Hutchinson, appearing on behalf of the Chamber of Commerce, Fargo, North Dakota.

E. B. Murphy, appearing for the Jamestown Warehouse Company and the Jamestown Chamber of Commerce.

Thomas Berge, appearing for the Greater Grand Forks Traffic Association, Grand Forks, North Dakota.

C. H. Burch, Drake, North Dakota, appearing in his own behalf.

[fol. 18] By the COMMISSION:

In our original report dated September 2, 1927, in Case No. 2255, we said that there appears to be no reason why action should not be deferred in connection with class rates pending disposition of the general investigation of class rates now being jointly conducted by the Interstate Commerce and western State Railroad Commissions under Docket 17,000, Part 2. In connection with Jamestown's complaint of discrimination, we found that unlawful discrimination existed and ordered the carriers to file reasonable and non-discriminatory tariffs. In compliance with this latter order, the carriers filed the schedules now under suspension in Case No. 2875. At our request, these sched-

ules have been voluntarily suspended by the carriers until January 1, 1930. In assigning Case No. 2875 for hearing, we reopened Case No. 2255, in part, and heard them on one record in Bismarck on March 19, 1928.

In our original report in Case No. 2255 we said, "There is every indication that the class rate investigation being conducted jointly by the Interstate Commerce Commission and the respective State Commissions will be completed and a decision rendered within a reasonably short time," and "We are not unmindful of the fact that shippers and carriers have gone to considerable expense in preparing exhibits and submitting their case before us. The record with respect to class rates will accordingly be held open for further hearing in connection with Case No. 2255, Sub. 2, after the Interstate Case is decided."

To date the Interstate Commerce Commission, due to the thousands of pages of transcript, hundreds of exhibits, together with the tremendous scope of the investigation has been unable to render a tentative report which, as a matter of course, must be followed by briefs and lengthy oral argument. It therefore appears to us that the prayer of the shippers for relief, which has already been pending for years should not be further delayed in the hope that their problems might be solved or partially solved at some indefinite date in the future.

[fol. 19] In filing the schedules under suspension in Case No. 2875, the carriers also attempted to make certain increases in interstate rates which were suspended by the Interstate Commerce Commission in I. & S. Docket 3018, and on June 6, 1928, the Interstate Commerce Commission rendered its decision, reported in 144 I. C. C. 487. The Interstate Commission found that the suspended schedules had not been justified, and ordered them cancelled, which was done.

Complainants state that their chief interest is in the reasonableness of the intrastate rates from North Dakota jobbing points and the relationship between the North Dakota rates and those of their principal competitors, the Twin Cities and Duluth. Complainants point to the Minnesota distributing rates, which were originally applied between the Twin Cities and Duluth and North Dakota, and from Fargo, Grand Forks and Wahpeton to Minnesota.

They point out that this scale was originally about 95% of the North Dakota intrastate scale but that following the general percentage increases and reductions, and certain other changes, the North Dakota intrastate class rates at the present time are, in some instances, as much as 16% higher than the Minnesota distributing scale which the carriers had voluntarily published. The complainants point to the fact that jobbing or distributing scales are generally in effect in territory other than North Dakota, and insist that on account of the greater amount of traffic originating at jobbing points, and the regular movement, that North Dakota jobbing points are entitled to a scale of rates lower than the general distance basis. Exhibits were offered by the complainants showing that the North Dakota intrastate class rates are on a higher basis than the Minnesota intrastate rates, the South Dakota intrastate rates east of the Missouri River, as well as other rates in central western territory. They also stress the point of the admitted greater traffic density in North Dakota than in South Dakota east of the Missouri River, which latter territory enjoys a basis of class rates substantially less than North Dakota.

Complainants allege, and defendants admit, that there are three different joint line scales in North Dakota, if they can be considered as scales, ranging from 90% of the sum of the locals, to a theory of adding 35 miles to the single line distance, and, in some instances, to a joint line rate that is lower than the single line rate for the same distance. We are unable to find any justification for this. They also [fol. 20] stress the fact that this adjustment has been in effect for a number of years, seemingly a part of which time some of the rates were in violation of law, and they point to a lower of these rates and suggest that they might be the proper basis.

Complainants for Jamestown and other interior jobbing cities call attention to the fact that they have been trying for the past ten or twelve years to obtain some measure of relief from the much greater basis of joint line rates, which they are compelled to pay, in contrast with the lower basis of joint rates enjoyed by Grand Forks, Fargo and Wahpeton, and urge that some definite action be taken by us in the instant cases.

Defendant carriers first point to the several applications pending before the Interstate Commerce Commission and also to similar applications before this Commission and ask that no change be made in the rates until such time as the Interstate Commerce Commission shall pass upon their petitions, at which time they hope a proper level of reasonable and non-discriminatory rates will be promulgated. They further requested and have been granted indefinite postponement of their petitions for increases before this Commission.

They urge that the present single line intrastate rates in North Dakota are upon a much lower basis than might be proper, and cite the decision of the Interstate Commerce Commission in the Fargo-Jamestown Cases, 98 I. C. C., 691, wherein the Interstate — Commission fixed a basis of rates for application intrastate between certain points in Minnesota and interstate in a limited territory. This scale is generally higher for short distances and lower for the longer distances than the present North Dakota scale and does not coincide with the general basis between the Twin Cities and Duluth and North Dakota. Furthermore, distances under this scale are computed via multiple line routes.

Defendants lay particular stress upon the severe weather conditions prevailing in North Dakota, but the effect of these conditions is the same whether shipments move intrastate or interstate.

Defendants, particularly the Soo Line, recited the history of the Fargo and Grand Forks joint line rates, and state that for a number of years they have felt that these rates are too low, unjustly discriminatory and otherwise unlawful and should be cancelled, and that Fargo and Grand [fol. 21] Forks should be placed upon a combination basis. In our first report we discussed at length the situation of Jamestown versus Fargo, and as already stated, found unlawful discrimination, which we ordered removed. We agree that all of North Dakota's jobbing cities are entitled to equitable treatment, but there is nothing in the record to sustain the contention that joint rates should be on a combination basis. In many cases involving commodity rates, we have established joint rates by the addition of arbitraries to the single line rates, and there is no reason

why we should not continue to follow this practice in connection with all rates.

Upon the enlarged record, and upon further consideration, we are of the opinion and find:

1. That the schedules under suspension in Case No. 2875 have not been justified and shall be withdrawn and cancelled.

2. That the present joint line general distance class rates are, and for the future will be unreasonable in that they exceed the present single line general distance class rates by more than the following arbitraries in cents per 100 lbs.:

Classes	1	2	3	4	5	A	B	C	D	E
Arbitraries	8	7	6	5	3	3	3	2	2	1

3. That for the future, between all jobbing or distributing points, including Bismarck, Carrington, Devils Lake, Dickinson, Drake, Fairmount, Fargo, Grand Forks, Jamestown, Mandan, Max, Minot, New Rockford, Oakes, Valley City, Wahpeton and Williston, also between such points on the one hand and all other points on the other hand, reasonable and non-discriminatory single line class rates shall be not in excess of 90% of the current single line general distance class rates. Joint rates shall be made by the addition of the following arbitraries in cents per 100 lbs.:

Classes	1	2	3	4	5	A	B	C	D	E
Arbitraries	8	7	6	5	3	3	3	2	2	1

4. That for the future reasonable single line rates on petroleum and its products, carloads, shall not exceed 90% of the fifth class rates prescribed herein, and that joint rates shall be made by adding 3¢ per 100 lbs. to the single line rates.

5. That the jobbing scales prescribed herein shall be applied concurrently from and to all jobbing points.

[fol. 22] 6. That the Great Northern Railway Company and the Farmers Grain and Shipping Company shall be considered as a single line.

7. That not more than one arbitrary shall be added to make any joint rate. Distances for determining joint car-

load rates shall be computed via the shortest available routes where there are track connections. Distances for determining joint less than carload rates shall be computed via the same routes as carload traffic and in addition thereto via such points as less than carload freight reasonably can be transferred from one carrier to another.

8. That all rates prescribed herein shall be the maximum at directly intermediate points A longer line or longer lines may meet the rates of the shorter line or shorter lines, but shall observe such rates as maximum at intermediate points.

9. That in computing rates prescribed herein, fractions of less than ½¢ shall be dropped and fractions of ½¢ or over shall be made the next whole cent.

10. That all of these findings of fact and conclusions are without prejudice to different conclusions which may be reached in the cooperative proceedings now pending jointly before the Interstate Commerce Commission and western state Railroad Commissions.

An appropriate order will be entered.

Dated at Mismarck, North Dakota, this 8th day of May, 1929.

By the Commission:

C. W. McDonnell, President. Fay Harding, Commissioner. Ben C. Larkin, Commissioner.

[fol. 23] BOARD OF RAILROAD COMMISSIONERS, STATE OF NORTH DAKOTA

Case No. 2255

In the Matter of Investigation Upon the Commission's Own Motion, into the Freight Rates, Classifications, Rules, Regulations, Charges, and Practices of the Railroads Serving North Dakota, Applicable to All Commodities Moving in Carload and/or/Less-than-carload Lots Intrastate Between Points Within the State of North Dakota

Second Supplemental Order

Case No. 2875

Order

In the Matter of Suspension and Investigation of Chicago, Milwaukee & St. Paul Railway Company (H. E. Byram, Mark W. Potter, and Edward J. Brundage, Receivers), Supplement No. 6 to N. D. R. C. No. 88 and Supplement No. 1 to N. D. R. C. No. 94; Great Northern Railway Company, Supplement No. 2 to N. D. R. C. No. 79; Northern Pacific Railway Company, Supplement No. 3 to N. D. R. C. No. 167; Supplement No. 2 to N. D. R. C. No. 200, Publishing Increased Freight Rates on Classes and Commodities Intrastate Between Stations in North Dakota, filed to Become Effective November 28, 1927

Order

At a regular meeting of the Board of Railroad Commissioners of the State of North Dakota, all members being present, held in the offices of said Board in the City of Bismarck, North Dakota, on the 8th day of May, 1929, the above entitled matters being before said Board for determination, hearings thereon having been held and said matters having been fully and finally submitted to said Board, and having been duly considered and said Board having on the 8th day of May, 1929, made and filed of record a report containing its findings of fact and conclusions therein and directing that an order in accordance therewith be entered, which said report is hereto attached, hereby referred to and made a part hereof; therefore

It is hereby ordered:

1. That the schedules under suspension in Case No. 2875 [fol. 24] have not been justified and shall be withdrawn and cancelled and the proceedings discontinued.

2. That the present joint line general distance class rates are, and for the future will be unreasonable in that they exceed the present single line general distance class rates by more than the following arbitraries in cents per 100 lbs.:

Classes	1	2	3	4	5	A	B	C	D	E
Arbitraries	8	7	6	5	3	3	3	2	2	1

3. That for the future, between all jobbing or distributing points, including Bismarck, Carrington, Devils Lake, Dickinson, Drake, Fairmount, Fargo, Grand Forks, Jamestown, Mandan, Max, Minot, New Rockford, Oakes, Valley City, Wahpeton and Williston, also between such points on the one hand and all other points on the other hand, reasonable and non-discriminatory single line class rates shall be not in excess of 90% of the current single line general distance class rates. Joint rates shall be made by the addition of the following arbitraries in cents per 100 lbs.

Classes	1	2	3	4	5	A	B	C	D	E
Arbitraries	8	7	6	5	3	3	3	2	2	1

4. That for the future reasonable single line rates on petroleum and its products, carloads, shall not exceed 90% of the fifth class rates prescribed herein, and that joint rates shall be made by adding 3¢ per 100 lbs. to the single line rates.

5. That the jobbing scales prescribed herein shall be applied concurrently from and to all jobbing points.

6. That the Great Northern Railway Company and the Farmers Grain and Shipping Company shall be considered as a single line.

7. That not more than one arbitrary shall be added to make any joint rate. Distances for determining joint carload rates shall be computed via the shortest available routes where there are track connections. Distances for determining joint less than carload rates shall be computed via the same routes as carload traffic and in addition thereto via such points as less than carload freight reasonably can be transferred from one carrier to another.

[fol. 25] 8. That all rates prescribed herein shall be the maximum at directly intermediate points. A longer line or longer lines may meet the rates of the shorter line or shorter lines, but shall observe such rates as maximum at intermediate points.

9. That in computing rates prescribed herein, fractions of less than ½¢ shall be dropped and fractions of ½¢ or over shall be made the next whole cent.

10. That all of these findings of fact and conclusions are without prejudice to different conclusions which may be reached in the cooperative proceedings now pending jointly before the Interstate Commerce Commission and western State Railroad Commissions.

11. That all of these changes shall be made on or before May 20, 1929, or not less than three days' notice to this Commission and to the public by the filing and posting of tariffs in the regular manner, and

It is further ordered:

That these orders shall remain in effect until further orders of this Commission.

Dated at Bismarck, North Dakota, this 8th day of May, 1929.

By the Commission:

C. W. McConnell, President.

Attest: Mary E. Parsons, Secretary.

[File endorsement omitted.]

[fol. 26] In United States District Court

Application for Interlocutory Injunction—Filed June 25, 1929

Now come the plaintiffs above named and, at the time of presentation to the Court of their bill of complaint filed herein, move the Court for an interlocutory injunction pending the determination of this action restraining the defendants and each of them as prayed for by the plaintiffs in their bill of complaint.

And plaintiffs request the presiding Judge of this Court to convene three judges to hear such application for an interlocutory injunction as provided by statute.

Dated at Fargo, N. D., June 25, 1929.

D. F. Lyons, F. J. Gehan, J. N. Davis, A. H. Lossow, Lawrence, Murphy & Nilles, F. G. Dorety, R. J. Hagman, Solicitors for Plaintiffs.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

STIPULATION RE HEARING—Filed June 25, 1929

It is hereby stipulated and agreed that the application of the plaintiffs in the above entitled suit for an interlocutory injunction may be heard and determined by a court of three judges sitting at St. Paul, Minnesota. Said hearing shall be held in the Federal Building at St. Paul, Minnesota, at 10:00 A. M., July 2, 1929.

Dated at Fargo, N. D., June 25, 1929.

D. F. Lyons, F. J. Gehan, J. N. Davis, A. H. Lossow, Lawrence, Murphy & Nilles, F. G. Dorety, R. J. Hagman, Solicitors for Plaintiffs. James Morris, Solicitors for Defendants.

[File endorsement omitted.]

[fol. 27] IN UNITED STATES DISTRICT COURT

ORDER SETTING CASE DOWN FOR HEARING—Filed July 1, 1929

Upon the stipulation between the parties to this case, filed herein, it is

Ordered that a session of this Court be held at the United States Court Room, in the City of St. Paul, Minnesota, on July 2nd, 1929, at ten o'clock A. M., to hear the motion of the plaintiffs for a temporary restraining order against the defendants, as prayed for in the bill of complaint.

Dated this 1st day of July, 1929.

Andrew Miller, Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

AMENDMENT TO BILL OF COMPLAINT—Filed July 2, 1929

To the Honorable the Judges of the District Court of the United States for the District of North Dakota, Southwestern Division:

The plaintiffs above named hereby amend their bill of complaint filed in the above entitled court in the above pro-

ceedings on the 25th day of June, 1929, in the following respects:

I

Paragraph X of said bill of complaint is amended so as to read as follows:

On May 29, 1925, the Board of Railroad Commissioners of North Dakota instituted Case No. 2255, an investigation upon their own motion before that body for the purpose of determining to what extent, if any, the North Dakota intrastate rates may be unjust, unreasonable, unjustly discriminatory or unduly preferential, and made the plaintiffs herein respondents. Hearings were had in this proceeding and on September —, 1927, the Board of Railroad Commissioners entered an order in that proceeding which provided with respect to the intrastate class rates that the record should be held open for further hearing after the Interstate Commerce Commission renders a decision in Docket 17,000, Rate Structure Investigation, in which is in issue the interstate class rates and relationship between those rates and the North Dakota intrastate class rates. On [fol. 28] January 28, 1928, the Board of Railroad Commissioners of North Dakota reopened its general investigation, Case No. 2255, insofar as it related to class rates and certain other rates, and a further hearing was had therein in connection with the hearing in its Case 2875, a proceeding in which the Board suspended certain tariffs of the plaintiffs publishing changes in certain North Dakota intrastate class rates as a result of a requirement contained in the North Dakota Railroad Commission's order in Case No. 2255 dated September 2, 1927.

On May 8, 1929, the Board of Railroad Commissioners of North Dakota entered its further order in its general investigation, Case No. 2255, and in the said suspension proceeding, Case No. 2875, (a true and correct copy of which order of May 8, 1929, is hereto attached, marked "Exhibit A"), requiring, among other things, the establishment of a scale of distributing or jobbing class rates 10% lower than the existing class rates, which said distributing or jobbing class rates to apply between all jobbing or distributing points in North Dakota, and to and from such distributing or jobbing points, and to apply as maxima at intermediate points. Said order of May 8, 1929, as a result of a supple-

mental order of the Board of Railroad Commissioners of North Dakota dated June 26, 1929, one day after the filing of the bill of complaint in this proceeding, is made effective on July 12, 1929, on not less than three days' notice to the Board and to the public by filing and posting of tariffs in the regular manner.

Plaintiffs seek to enjoin the defendants from putting into effect and enforcing the scale of distributing or jobbing class rates required by said order of May 8, 1929.

II

Paragraph XII of said bill of complaint is amended so as to read as follows:

These plaintiffs since the issuance of the order of May 8, 1929, by the North Dakota Board of Railroad Commissioners have filed a petition with the Interstate Commerce Commission to proceed under Section 13 of the Interstate Commerce Act to determine whether or not said scale of class rates required by the North Dakota Board's order of May 8, 1929, will unjustly discriminate against persons and localities in interstate commerce or constitutes a burden on interstate commerce. A full, true and correct copy of said petition is hereto attached, marked "Exhibit B." Plaintiffs alleged in their petition that the said scale required by [fol. 29] the North Dakota Board does unjustly discriminate against persons and localities in interstate commerce and is an unreasonable burden on interstate commerce in violation of Section 13 of the Interstate Commerce Act, and plaintiffs asked in said petition that the Interstate Commerce Commission institute an early investigation with respect to the matters and things set forth in said petition and that the Commission in said proceeding terminate and prohibit such discriminations and preferences by prescribing the class rates to be charged by these plaintiffs for intrastate transportation in North Dakota. When said matter is set down for hearing by the Interstate Commerce Commission all interested parties can appear and present evidence and all the facts as to both intrastate and interstate rates can be submitted to the body, which, under the Constitution and laws of the United States, has authority to determine these questions. Said petition of these plaintiffs is pending before the Interstate Commerce Commission

in addition to the said proceeding known as Rate Structure Investigation, Docket 17,000, heretofore referred to, in which the question of whether the North Dakota intrastate rates are violative of Section 13, of the Interstate Commerce Act is in issue and in which the Interstate Commerce Commission has the power and authority to prescribe North Dakota intrastate class rates which will avoid undue discrimination and prejudice against interstate commerce.

In the event the intrastate scale of class rates prescribed by the North Dakota Board goes into effect on July 1, 1929, and continues in effect until the Interstate Commerce Commission renders a decision in the said proceeding which plaintiffs have petitioned the Interstate Commerce Commission to institute under the provisions of Section 13 of the Interstate Commerce Act, or until the Interstate Commerce Commission renders a decision in its pending proceedings entitled Rate Structure Investigation, Docket 17,000, plaintiffs will suffer irreparable loss and injury if the scale of intrastate class rates prescribed by the North Dakota Board in its order of May 8, 1929, is ultimately found by the Interstate Commerce Commission to result in an undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or in undue, unreasonable or unjust discrimination against interstate or foreign commerce, and if the Interstate Commerce Commission prescribes a scale of class rates for intrastate application in North Dakota which is higher than the scale prescribed by the Board of Railroad Commissioners of North Dakota.

[fol. 30] Dated at St. Paul, Minn., this 1st day of July, 1929.

D. F. Lyons, F. J. Gehan, J. N. Davis, A. H. Lossow, Lawrence, Murphy & Nilles, F. G. Dorety, R. J. Hagman, Solicitors for Plaintiffs.

Duly sworn to by B. W. Scandrett. Jurat omitted in printing.

EXHIBIT B TO AMENDMENT TO BILL OF COMPLAINT

BEFORE THE INTERSTATE COMMERCE COMMISSION

In the Matter of Interstate Class Rates of the GREAT NORTHERN RAILWAY COMPANY and Other Carriers in the State of North Dakota

Petition under Section 13 of the Interstate Commerce Commission Act

To the Honorable Interstate Commerce Commission:

Your petitioners, Great Northern Railway Company, Northern Pacific Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Chicago, Milwaukee, St. Paul & Pacific Railroad Company and Farmers Grain and Shipping Company, respectfully petition the Commission and allege:

[fol. 31]

I

The Great Northern Railway Company is a corporation organized and existing under the laws of the State of Minnesota, The Northern Pacific Railway Company is a corporation organized and existing under the laws of the State of Wisconsin. The Minneapolis, St. Paul & Sault Ste. Marie Railway Company is a corporation organized and existing under the laws of the States of Minnesota, Wisconsin, Michigan and the Territory of Dakota. The Chicago, Milwaukee, St. Paul & Pacific Railroad Company is a corporation organized and existing under the laws of the State of Wisconsin. The Farmers Grain and Shipping Company is a corporation organized and existing under the laws of the State of North Dakota.

II

Petitioners are all common carriers of freight and passengers by rail in intrastate commerce in the State of North Dakota and in interstate commerce between points in the State of North Dakota and numerous other states, and are all subject to the Interstate Commerce Commission Act. This petition is filed under Section 13 of the Interstate Commerce Commission Act.

III

The Board of Railroad Commissioners of the State of North Dakota is authorized and empowered by the laws of that state to fix lawful rates and charges for the transportation of freight over the petitioners' lines of railroad between points in the State of North Dakota, including class rates; and under the statutes of North Dakota failure on the part of petitioners to comply with the orders of said Board prescribing such rates constitutes a misdemeanor and subjects petitioners to a penalty of not less than $500 nor more than $5,000 for each offense.

IV

On May 29, 1925, the Board of Railroad Commissioners of North Dakota upon its own motion instituted a proceeding before that body known as Case No. 2255 for the purpose of determining to what extent, if any, the North Dakota intrastate rates for transportation of freight may be unjust, unreasonable, unjustly discriminatory or unduly preferential, and petitioners were respondents in said proceeding. Hearings were had and on September 2, 1927, said Board entered an order which provided with respect to the class rates that the record should be kept open for further hearing after the Interstate Commerce Commission renders [fol. 32] a decision in Docket 17,000, Rate Structure Investigation. In the findings upon which said order was based it was stated that the Board is greatly impressed with the advantages of hearings jointly with the Interstate Commerce Commission under the co-operative plan and that where both state and interstate rates are involved the co-operative method of disposing of the matters at issue is superior.

The Commission's order required the petitioners herein to file with the Board, subject to its approval, new tariffs which will contain reasonable and nondiscriminatory class rates between Jamestown and points on the Minneapolis, St. Paul & Sault Ste. Marie Railroad on the one hand and between Fargo and points on the Minneapolis, St. Paul & Sault Ste. Marie Railroad on the other hand.

Petitioners filed new tariffs pursuant to this requirement and the said Board suspended them in its Case No. 2875. On January 28, 1928, said Board reopened its general in-

vestigation, Case No. 2255, in so far as it related to class rates and certain other rates, and set that proceeding down for further hearing in connection with the hearing to be had in the suspension proceeding, Case No. 2875.

Subsequently on May 8, 1929, said Board issued its findings of fact and conclusions and order in the said proceedings, a true copy of which order is hereto attached marked "Exhibit A," cancelling the suspended tariffs and requiring respondents, petitioners herein, (1) to establish joint line general distance class rates for intrastate application in North Dakota on the basis of specified arbitraries over the single line rates from the point of origin to point of destination, instead of the present basis of 85% or 90% of the sum of the locals; and (2) to establish between the jobbing or distributing points in North Dakota, including seventeen specifically named, and between such jobbing points on the one hand and all other points on the other hand, single line class rates 90% of the current single line distance class rates, joint rates to be made by the addition of specified arbitraries. Said order required this jobbing or distributing scale to be applied concurrently from and to all jobbing points and to be the maximum at directly intermediate points. Said order was made effective May 20, 1929, but by supplemental order dated May 14, 1929, the effective date of the order was extended to June 1, 1929, and by supplemental order dated May 18, 1929, the effective date was extended to July 1, 1929.

[fol. 33] V

The effect of said order of May 8, 1929, will be to reduce the net revenues of the petitioners in connection with transportation of class traffic intrastate in North Dakota approximately the following sums per annum:

Great Northern Railway Company	$50,000
Northern Pacific Railway Company	50,000
Minneapolis, St. Paul & Sault Ste. Marie Railway Company	15,000
Chicago, Milwaukee, St. Paul & Pacific Railroad Company, exceeding	3,000
Farmers Grain & Shipping Company	800

or a total in excess of $118,800.00 per annum.

VI

The petitioners are not earning a return of 5¾% upon the value of their properties as found by the Interstate Commerce Commission nor will they earn in the immediate future under a continuation of the existing freight rates the rate of return upon the value of their properties prescribed by law and by the order of this Commission. The reductions in revenue incident to compliance with the North Dakota Board's class rate order will require an increase in the interstate rates of petitioners and other carriers in the rate group in which they are situated in order to compensate for such loss of revenue and in order to even approximate the rate of return prescribed by law.

VII

Compliance with said order of May 8, 1929, will cause undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce in North Dakota on the one hand and interstate and foreign commerce on the other hand, and unreasonable and unjust discrimination against interstate and foreign commerce, in violation of Section 13 of the Interstate Commerce Act.

VIII

On August 26, 1920, petitioners increased the interstate class rates pursuant to authority granted by this Commission in Ex Parte 74. Petitioners applied to the Board of Railroad Commissioners of North Dakota for authority to make corresponding increases in the North Dakota intra- [fol. 34] state rates, including the class rates, which authority was denied on December 14, 1920. Thereupon the Interstate Commerce Commission, upon application of the petitioners herein, instituted a Section 13 proceeding and after hearing issued its findings and order on May 3, 1921, in North Dakota Rates, Fares and Charges, Docket 12085, 61 I. C. C. 504, requiring the same increases in the intrastate rates in North Dakota, including the class rates, as were made in the interstate rates under Ex Parte 74 to remove unjust discrimination against interstate commerce under Section 13 which the Commission found resulted

from a failure to make corresponding increases in the North Dakota intrastate rates. Petitioners complied with the Commission's order effective May 27, 1921, and thereupon the relationship existing between the North Dakota intrastate class rates and the interstate class rates prior to the advance in the interstate rates under Ex Parte 74 was restored.

IX

Thereafter on June 5, 1921, the Board of Railroad Commissioners of North Dakota entered a further order in the said proceedings pending before it which had the effect of (1) cancelling its previous order which denied authority to make corresponding increases in the intrastate rates and (2) of establishing the intrastate rates in North Dakota which the Interstate Commerce Commission prescribed by its order of May 3, 1921, in Dakota 12085, North Dakota Rates, Fares and Charges, 61 I. C. C. 504, which rates the North Dakota Board's order provided were to continue in force and effect until revoked, modified or superseded by appropriate lawful proceedings before the Board or as otherwise provided by law. Said order of the Board recited that its purpose was to regain jurisdiction over its intrastate rates which it lost as a result of the Interstate Commerce Commission's order in North Dakota Rates, Fares and Charges, Docket 12085.

Thereupon the Board filed an application with the Interstate Commerce Commission to rescind its order of May 3, 1921, in Docket 12085 which the Interstate Commerce Commission did on July 22, 1922, reciting that if the Interstate Commerce Commission's said order were vacated "the existing increased intrastate rates and charges for freight services in said state will continue in force and effect until revoked, modified or superseded by appropriate lawful proceedings before said Board or as otherwise provided by law." Thereupon the said Board regained control over [fol. 35] its intrastate rates to the extent permitted by law under the circumstances.

X

The relationship between the North Dakota intrastate class rates and the interstate class rates established by the

Interstate Commerce Commission in the Section 13 case, Docket 12085, is still in effect except (1) that on July 1, 1922, the interstate class rates were reduced 10% under Reduced Rates, 1922, 68 I. C. C. 676, and the petitioners made corresponding reductions in the North Dakota intrastate class rates; (2) effective September 11, 1925, as a result of the so-called Fargo Case (Commercial Club of Fargo v. A. W. Ry. Co., et al., 98 I. C. C. 691) the interstate class rates from Fargo, North Dakota, to points in Minnesota within a radius of 150 miles from Fargo were increased, and the interstate class rates from Minneapolis, St. Paul and Duluth to Fargo were increased and to Jamestown and Valley City, North Dakota, were increased for some classes and reduced for others, which had the general effect of relating the North Dakota intrastate class rates to the interstate rates more favorably than theretofore; and (3) a reduction of approximately 10% in the intrastate class rates upon taking effect of the North Dakota Commission's order of May 8, 1929, which will have the effect of relating the intrastate class rates to the interstate class rates on a still more favorable basis than existed as a result of the Interstate Commerce Commission's order in the Section 13 case, Docket 12085.

XI

Upon the establishment of the intrastate class rates prescribed in the North Dakota Board's order of May 8, 1929, a distributive scale of class rates will be created which will move the great bulk of the class traffic intrastate in North Dakota and which will be more than 10% below the scale of class rates now generally applicable for interstate shipments between Minnesota, North Dakota and South Dakota.

Said new intrastate class rates will be lower than the interstate class rates now in effect from Minneapolis, St. Paul and Duluth to North Dakota points, some of which were prescribed by this Commission in the Fargo Case, with the exception that the intrastate rates prescribed by the Board's order of May 8, 1929, are somewhat higher than the class rates from Minneapolis, St. Paul and Duluth [fol. 36] to North Dakota for certain distances for such classes as move the least traffic.

Said new North Dakota intrastate class rates will be substantially lower for Classes 1, 2, 3, 4, and A, which classes move the bulk of traffic on class rates, than the scale prescribed in the Fargo case for application from Fargo to certain Minnesota points and from certain jobbing points in Minnesota to Minnesota destinations, except that the new North Dakota intrastate class rates will be somewhat higher than the Fargo scale for a comparatively few distances with respect to Classes 5th, B, C, D and E.

The present interstate class rates between Montana and North Dakota are approximately 20% higher than the North Dakota intrastate class rates before making the reduction in the latter rates required by the Board's order of May 8, 1929.

XII

The North Dakota intrastate class rates are published in the following tariffs:

G. N. Ry., N. D. R. C. 93,
C. M. St. P. & P. Ry., N. D. R. C. 103.

The interstate class rates referred to above are established in the following tariffs:

G. N. Ry. I. C. C. A-6559,
N. P. Ry. I. C. C. 8504,
M. St. P. & S. S. M. I. C. C. 6286,
C. M. St. P. & P. I. C. C. B-5592,
T. G. & S. C. I. C. C. F-34,
Agent Tolls I. C. C. 1212.

XIII

Establishment of the lower basis of intrastate class rates in North Dakota required by said order of May 8, 1929, will result in trucking shipments over the state line between North Dakota and Minnesota in order to obtain the benefit of the lower North Dakota intrastate class rates and to defeat the interstate class rates now in effect, which situation existed subsequent to August 26, 1920, and prior to the time that the North Dakota intra state class rates were increased as a result of the order in Docket 12085. The lower basis of North Dakota intrastate class rates will result in numerous undue discriminations in favor of intra-

state commerce in North Dakota and to the prejudice of interstate shippers to, from and through the State of North Dakota.

[fol. 37] XIV

No traffic, operating or other conditions exist which justify the disparity between North Dakota intrastate rates and the interstate rates created by the North Dakota Board's order of May 8, 1929. The cost and expense of transporting the traffic moving on class rates between stations in North Dakota is as great or greater than the cost of transporting the same commodities in interstate commerce to and from stations in North Dakota.

XV

The existing interstate class rates for transportation to, from and through the state of North Dakota are not unjust or unreasonable, and there is a substantial movement of traffic on said class rates to, from and through the state of North Dakota. The intrastate class rates prescribed by the North Dakota Board's order of May 8, 1929, will result in rates which will be unjustly and unreasonably low for the service to be performed and the said existing intrastate rates are now less than should hereafter be charged for the movement of traffic under class rates.

XVI

Petitioners and the Board of Railroad Commissioners entered appearances and introduced evidence at the hearings in Rate Structure Investigation, Docket 17,000, Part II, which is now pending for decision by the Interstate Commerce Commission, and the record in that case shows the North Dakota intrastate class rates and interstate class rates and the relationship between the two, but it does not show the order of the North Dakota Board of May 8, 1929, which was made subsequent to the closing of the hearings in Docket 17,000, Part II. That proceeding was a co-operative proceeding with the state commissions, including the Board of Railroad Commissioners of North Dakota which had one of its members sitting with the Interstate Commerce Commission during some of the hearings.

The reductions in the class rates required by the North Dakota Board's order of May 8, 1929, are in disregard of the findings of the Interstate Commerce Commission in said Section 13 case, Docket 12085, and are in the nature of a general reduction creating a difference in the general level of class rates for intrastate and interstate commerce, similar to that which existed prior to the Interstate Commerce Commission's order in said Docket 12085.

[fol. 38] To the end, therefore, that the said undue and unreasonable advantages, preferences, prejudices and discriminations as between intrastate and interstate commerce may be removed and prohibited, your petitioners pray that this Honorable Commission institute an early investigation with respect to the matters and things herein set forth as provided for in Section 13 of the Interstate Commerce Act, that due notice thereof be given to the State of North Dakota, and that an order be entered declaring discriminatory the intrastate class rates prescribed by order of May 8, 1929, by the Board of Railroad Commissioners in so far and to the extent that the same are lower than the corresponding rates for similar interstate movements and that this Commission by proper order terminate and prohibit such discriminations and preferences by prescribing the rates, fares and charges to be made by the petitioners for class traffic intrastate in North Dakota.

Your petitioners further pray for such other additional and general relief in the premises as to this Commission may seem right and proper.

Dated this 19th day of June, 1929.

Great Northern Railway Company, by R. J. Hagman, Its Attorney. Northern Pacific Railway Company, by M. L. Countryman, Jr., Its Attorney. Minneapolis, St. Paul & Sault Ste. Marie Railway Company, by A. H. Lossow, Its Attorney. Chicago, Milwaukee, St. Paul & Pacific Railroad Company, by J. N. Davis, Its Attorney. Farmers Grain and Shipping Company, by R. J. Hagman, Its Attorney.

1120 Great Northern Building,
St. Paul, Minnesota.

[File endorsement omitted.]

[fol. 39] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF DEFENDANTS—Filed July 2, 1929

The Joint and Several Answer of Defendants to the Bill of Complaint

Now come the above-named defendants and, jointly and severally, for answer thereto, say:

1

Defendants deny paragraph one (1) of said Bill with the exception in this respect concerning which said defendants allege: The subject matter of said bill concerns class rates, wholly intrastate, within the state of North Dakota, duly found, adjudged and ordered to be effective on July 12th, 1929, by said Board of Railroad Commissioners, after due notice and hearing granted to said plaintiffs, to other carriers operating in the State of North Dakota, and to other parties over and concerning which said Board possesses ample and complete jurisdiction and powers as provided by the Laws of the State of North Dakota, subject to the powers and duties of the Interstate Commerce Commission, under Section Thirteen (13) of the Transportation Act of Congress of February 28th, 1920.

2

Defendants admit paragraph two of said bill excepting [fol. 40] that they allege on information and belief that said Minneapolis, St. Paul and Sault Ste. Marie Railway Company is a North Dakota corporation.

3

Defendants admit paragraph 3 of said Bill.

4

Concerning paragraph four of said bill, defendants admit that said Board of Railroad Commissioners possesses the power and the duty to fix lawful, reasonable and nondiscriminatory freight rates for the transportation of freight between points in the State of North Dakota, and to alter

and amend rates previously established in so doing, all as provided in Section 4728 of Compiled Laws of North Dakota and Section 4795a6 of Supplement of said 1913 Compiled Laws. In this respect defendants allege that, under and pursuant to Section 4795a1 of said supplement to said 1913 compiled Laws and as otherwise provided in the Constitution and Statutory Laws of the State of North Dakota, the said defendant Commissioners have the power and the duty to prohibit and to remedy unjust, unreasonable and discriminating intra-state freight rates not only in relation to other intra-state freight rates but also in their relations to interstate freight rates; that said Commissioners also have the power, under Section 4795c1 of said supplement to order different rates, classifications, rules and regulations in connection with the transportation of commodities from or to certain points within said state, either single line or joint line; that said Commissioners also possess the power and the duty to investigate and to inform themselves concerning interstate freight rates with reference to their unreasonableness, unjust or discriminatory character as affecting the industries, citizens or interests of said state in an unjustly discriminating manner, and otherwise, and in such event, to present [fol. 41] the facts and to appeal for relief to the Interstate Commerce Commission, all as provided in Section 591 of the Compiled Laws of the State of North Dakota.

Defendants admit the provisions of section 4737 concerning penalties and section 4734 concerning treble damages, all of said compiled laws, and also the said duties of said Commissioners to inquire into neglect or violation of the laws of said state as set forth in section 589 and 590 of said compiled laws but deny their strict application as alleged by said plaintiffs; in respect thereto, defendants allege that under violation of orders of said Commissioners, inquiry by them may be made or complaint to them may be heard and relief secured from liability and from the penalties of the law, all as prescribed in sections 4738, 4740, 4741, and 4742 of said compiled laws; that furthermore, said Commissioners may appeal to the Courts of said state for enforcement of its orders as provided in section 4743 of said compiled laws; that furthermore said plaintiffs possesses under and pursuant to the laws of said state and particularly sections 4609 c. 34, 4609 c. 35 and

4609 c. 36 of said supplement to the compiled laws of 1913, a complete, speedy and adequate remedy by appeal to the Courts of said State to inquire into and review all orders of said Commissioners with a specific provision of law for speedy hearing in preference to all other civil business.

Defendants admit the provisions of section 595 and 600 of said compiled laws with reference to the powers and *tuues* of the Attorney General.

5

Concerning paragraph 5 of said Bill, defendants deny the allegations, in the language as used and in respect thereto allege that on May 8th, 1929, the said Commissioners made their supplemental findings of fact and Conclusions in case No. 2255 concerning class rates, intrastate and in case No. 2875, heard in connection therewith, in the manner and form as set forth in Exhibit "A" attached to said Bill; that, concerning such orders, plaintiffs are seeking injunctive relief herein.

[fol. 42] 6

Concerning paragraph 6 of said Bill, defendants deny the first paragraph thereof, save in this respect that they admit that on August 26, 1920, the Interstate Commerce Commission in Ex Parte, 74 (Increased rates 1920, 58 I. C. C. 220) did authorize a general advance in freight rates throughout the United States interstate. Defendants allege that prior to that time the scale of general class rates intra state in North Dakota were considerably higher than the the same general class rates in Minnesota intra-state; that the general scale of interstate class rates from Minnesota to North Dakota points was the same as the general scale of class rates in North Dakota intrastate; that the class rates interstate between Minneapolis, St. Paul, Duluth and points taking the same rates on the one hand and points in North Dakota on the other were on a lower scale than the regular scale applying between Minnesota and North Dakota points and lower than the general scale applying intrastate in North Dakota. The general Minnesota interstate and North Dakota intra state scales also have among other things the following exceptions;

That there were also lower jobbing class rates between Fargo, Grand Forks, Wahpeton, and Fairmount, interstate to points in Minnesota, also lower interstate jobbing class rates from Thief River Falls, Minnesota, to points in North Dakota, also lower jobbing class rates intrastate between Fargo, Grand Forks, Wahpeton and Fairmount, North Dakota, to points on the Soo Line in North Dakota, all of which rates were voluntarily established by the carriers. That at that time there existed no terminal bases of class rates from North Dakota jobbing points intrastate which resulted in said jobbing points being compelled to pay the regular distance scale intra state in North Dakota except the points above noted.

Defendants admit the second paragraph of paragraph 6, save in this respect: they allege that none of the freight rates, including the class rates, as ordered by the Interstate [fol. 43] Commerce Commission, in said docket 12085 are in effect today and have not been since July 1st, 1922.

7

Defendants admit paragraph 7 of said Bill, save and except that defendants allege in respect thereto that said Commissioners during all of the times concerned had as it now has full and complete jurisdiction over intrastate rates, subject to the power and authority of said Interstate Commerce Commission under and pursuant to Section 13 of said Transportation Act, which it exercised as stated under the then existing circumstances.

8

Defendants deny paragraph 8 of said Bill and in respect thereto allege that the interstate rates, including class rates, set forth in said ex parte 74 have been materially changed and none of the same are now in force and likewise the intrastate rates adjusted under said docket No. 12085 have likewise been changed and altered and specific illustrations thereof are given in the manner and form as follows: Effective July 1st, 1922, the interstate class rates were reduced ten per cent (10%) by order of the Interstate Commerce Commission in Reduced Rates 1922, 68 I. C. C. 676: On September 11, 1925, there was a further adjustment made

by order of the Interstate Commerce Commission in commercial Club of Fargo vs. A. W. Ry. et al., 98 I. C. C. 691. The Interstate class rates from Fargo to points in Minnesota within a radius of one hundred fifty (150) miles from Fargo were adjusted by the Interstate Commerce Commission and the rate from Minneapolis, St. Paul and Duluth to Fargo were adjusted as were the rates to Jamestown and Valley City, representing both reductions and increases. The class rates from Duluth to Fargo interstate were materially reduced on ex-lake traffic. Adjustments in the local rates applying from Omaha, Nebraska, from Kansas City, Missouri, from Chicago, Illinois, representing both reductions and increases. Proportional rates from Chicago to Fargo on traffic originating East of the Illinois-Indiana state line were materially reduced, thereby reducing the [fol. 44] class rates interstate from all points east of the Indiana-Illinois state line to the Atlantic seaboards on shipments destined Fargo, North Dakota. Similar adjustments were made at Grand Forks, North Dakota. Adjustments of class rates interstate from upper Mississippi River crossings to Fargo were made on order of the Interstate Commerce Commission under date of February 21st, 1926, 107 I. C. C. 256, some being reductions others increases.

Brick rates which are commodity rates were ordered reduced interstate from points in Minnesota to points in North Dakota. A. C. Ochs Brick and Tile Company vs. C. & N. W. Ry. et al., 139 I. C. C. 695. Likewise these plaintiffs voluntarily reduced and put in force rates interstate from points both in Minnesota and Iowa to points in North Dakota representing mostly reductions on brick and other articles taking the same rate. M. St. P. & S. S. M. Ry. I. C. C. # 6330. The intrastate class rates prescribed in docket 12085 were reduced ten per cent (10%) on July 1st, 1922, by action of the carriers following the interstate reduction ordered by the Interstate Commerce Commission in reduced rates 1922, supra. Further in this very case, No. 2255, the rates on brick and articles taking the same rates intrastate from Grand Forks and other manufacturing points within the state were ordered reduced by the said Railroad Commissioners on November 14th, 1927, and said plaintiffs published said rates and put the same in force without contest. G. N. Ry. Freight Tariff N. D. R. C. No.

93. Likewise, the rates intrastate on concrete pipe were ordered adjusted by said Railroad Commissioners in case No. 2815, which represented general reductions. Plaintiffs complied with said order, and made effective the rates without complaint or contest on March 1st, 1928, Supplement No. 13 to G. N. Ry. N. D. R. C. No. 93.

The grain and grain products rates intra state for both single and joint line movement were brought under attack by the State of North Dakota doing business as the North Dakota Mill and Elevator Association and others and said Railroad Commissioners, under case No. 2375 ordered the rates reduced intrastate for single and joint line movement [fol. 45] with transit involved. For instance, on single line movement where wheat originates at Devils Lake for example, and is Milled in transit at Grand Forks for Rugby, North Dakota, the carriers charged a local rate to Grand Forks plus the local rate on the finished product from Grand Forks to Rugby; under the Commission's decision, the rate became and is now made by applying the single line rate for the total distance plus one and one half cents as a milling transit charge. On joint line traffic, with transit involved, the carrier charged the full local rate to the junction and the full local rate from the junction; on traffic not accorded transit, the carriers charged eighty-five per cent (85%) of the combination of locals. Under the Commissions decision in said Number 7325 the rate is arrived at as follows: by taking the single line rate for the entire distance plus one and one half cents for the joint line haul plus one and one half cents as the charge for milling at Grand Forks. The plaintiffs in this case, excepting the "Milwaukee" railway which was not a party, contested said Commission's decision; in case No. 2375, by appeal to the District of Burleigh County and said Court ordered said carriers to put the reduced rates into effect which they did under date of January 20th, 1927. The said carriers appealed from said decision of said District Court to the Supreme Court of the State of North Dakota, and said Court affirmed the said District Court on May 21st, 1928, in 219 (N. D.) N. W. 295. Furthermore, the plaintiff "Milwaukee Railway" in August 1925, voluntarily put in force and effect substantial reductions in the 12085 scale applying on intra state class rates and other rates in North Dakota. That in the first

decision in case No. 2255 the Board of Railroad Commissioners ordered all rates including intrastate class rates to be placed on the single line basis between points on the Great Northern Railway and points on the Farmers Grain and Shipping Company and this order was complied with by the plaintiffs on November 14, 1927. The Board also found that no intermediate switching charge should be made at Devils Lake, between the Great Northern Railway and [fol. 46] the M. St. P. S. S. M. Ry. through or via the Farmers Grain and Shipping Company. This was also complied with by plaintiffs.

9

Defendants deny paragraph 9 of said Bill, save and except that defendants allege that the Interstate Commerce Commission is conducting investigation under docket No. 17000, which includes class rates interstate and grain products rates interstate as well as other commodities, which really made its commencement in September 1925, at Chicago, Illinois, when the carriers had its hearing in Ex Parte 87 for the taking of evidence therein which sought an increase in rates including class rates. This rate increase sought was denied by the Interstate Commerce Commission on July 14th, 1926, 113 I. C. C. No. 3. It was found in this case as follows: 1st: Upon applications of the carriers in the western district seeking increases in freight rates, generally averaging in figures 5% with exceptions as to certain commodities, being predicated on the alleged existence of an emergency in that district, found that the showing as to emergency does not warrant the increases as sought.

Second. Record held open for further consideration in connection with No. 17000 and related proceedings. The Interstate Commerce Commission has held numerous hearings throughout the country since such time concerning class rates in docket 17000, part 2; but the examiners in charge of such hearings have not even yet announced a proposed report for the Interstate Commerce Commission; even after a proposed report is made by said examiner, all parties then must have time to file exception briefs, after which oral argument will be set and heard before the Interstate Commerce Commission and then and then only will said case be submitted and ready for decision by said Commission. In

docket No. 17000 the Interstate Commerce Commission are investigating the rate structures, including class rates, in the entire Western district, from Chicago to the North Dakota Montana state line, and southwestern territory under the Hoch-Smith Resolution, and necessarily are considering the relationships of intra state rates, and have [fol. 47] asked the cooperation of numerous state railroad commissions, including the commissioners herein. That it is the duty of said Commissioners under the laws of the State of North Dakota, as hereinbefore stated, to consult and cooperate with said Interstate Commerce Commission, but that thereby said Commissioners lose no part or portion of their jurisdiction and powers over intra state rates, and said Interstate Commerce Commission acquires thereby no part of the powers or jurisdiction of said Commissioners. The said Interstate Commerce Commission powers and jurisdiction being confined to violations of Section 13 of the Transportation Act proved and established in a hearing held before said Commission.

Neither the Interstate Commerce nor the Interstate Commerce Act require intra state class rates to be uniform with interstate class rates. Rate structures are constantly undergoing changes which are made from time to time by various orders of the Interstate Commerce Commission and respective state commissions. There is no established rate structure in the sense of a permanent rate structure.

10

Defendants admit paragraph 10 of said Bill save and except that the record in said No. 2255 which plaintiffs allege was held open by said Commissioners by its order dated September 2nd, 1927, is still held open for further hearing after the Interstate Commerce Commission renders its decision in docket No. 17000 concerning class rates, all pursuant to order of said Commissioners in connection with its said order of May 8, 1929, and further allege that the effective date of the rates in said order of May 8th, 1929, is now July 12, 1929.

11

Defendants deny the first paragraph of paragraph 11 of said bill and in respect thereto allege that the said order

of May 8th, 1929, provides for terminal jobbing intrastate class rates, affecting seventeen cities in the state of North Dakota, viz: Bismarck, Carrington, Devils Lake, Dickinson, Drake, Fairmount, Fargo, Grand Forks, Jamestown, Mandan, Max, Minot, New Rockford, Oakes, Valley City, Wahpeton and Williston; that these cities by reason of their location and their distributing trade are entitled to [fol. 48] this classification concerning intrastate rates. That these cities constitute only a small proportion of the total number of cities in the State of North Dakota and relatively have a smaller total population than the balance of the cities. That these jobbing intrastate rates, if made effective, so as to remove present discrimination existing against North Dakota jobbing centers, will provide a greatly increased jobbing tonnage from these jobbing towns which they do not now possess by reason of the discrimination now existing. That these terminal jobbing centers under the prescribed jobbing class rates can send and will send tonnage under class rates to all parts of the state and will not be confined to distances under 160 miles as to the major portion of such tonnage.

Defendants deny the second paragraph of said paragraph 11 of said bill for the reason that they allege that the prescribed jobbing class rates intrastate in North Dakota will not be 10% less than the jobbing class rates interstate from Minnesota jobbing points into said State of North Dakota.

Concerning the third paragraph of said paragraph 11 of said bill, defendants deny same save and except in this respect concerning which they allege that plaintiffs admit that the intrastate jobbing class rates required by said order of May 8th, 1929, are somewhat higher than the said class rates interstate from Minneapolis, St. Paul and Duluth, to North Dakota points, for some distances over 230 miles and for classes 5, b, c, d and e; That all movements interstate under said class rates to North Dakota points from Duluth, for instance, must move at least to enter the State of North Dakota a distance of at least 252 miles to Fargo, 295 miles to Grand Forks, 236 miles to Wahpeton; from Minneapolis at least 232 miles to Fargo, 307 miles to Grand Forks, and 205 miles to Wahpeton; that the general mileage distances from the Eastern border of the State of

North Dakota to its western border are substantially as follows: Grand Forks to Fort Buford, North Dakota, main line, 348 miles; Fargo to Beach, north Dakota, main line 374 miles.

Concerning the fourth paragraph of said paragraph 11 of said bill defendants deny the result alleged in the first [fol. 49] sentence thereof and in respect thereto allege that Minneapolis and other jobbing centers in Minnesota enjoy a lower scale of class rates intra state for 150 miles than the said Fargo scale applied to Minnesota points from Fargo for 150 miles applied interstate and lower than the jobbing class rates prescribed in said order of May 8th, 1929, for points intra state in North Dakota, 150 miles from Fargo; this applies generally speaking for any distance up to 360 miles, as shown by Exhibit "A" hereto attached and made part hereof.

Concerning the fifth paragraph of said paragraph 11 of said bill, defendants deby same save and except in this respect concerning which they allege that the State of Montana has in effect jobbing class rates intrastate on a much lower basis than the Montana intra state class rates or the Montana North Dakota interstate scale, and there are jobbing class rates between North Dakota points such as Fargo, Grand Forks, Bismarck, Minot, etc., and Montana points that are lower than the general distance scale applying for miscellaneous movement between North Dakota points and Montana points, and that therefore the comparison made by the plaintiffs of the present class rates intra state with the existing general class rates interstate is not apropos, the issue herein.

Concerning the sixth paragraph of said paragraph 11 of said bill, defendants deny same save and except as hereinbefore defendants have alleged concerning the relationship of both intra state and interstate class rates as now existing. See paragraph 8 hereof.

Defendants deny the seventh paragraph of 11 of said bill.

Defendants deny paragrap 8 of paragraph 11 of said bill and in respect thereto allege that the interstate and intra state class rates are neither interrelated or interdependent. See Exhibit "A" attached.

Defendants deny paragraph 8 of paragraph 11 of said bill and in respect to all of said paragraph 11 and to all of said bill allege:

That the order complained of will not discriminate against localities in other states but will tend to relieve discrimination that already exist- against North Dakota [fol. 50] jobbing points by reason of lower intrastate class rates that exist in neighboring states, which condition is recognized by the interstate commerce commission in investigation and suspension docket 3018, reported in 141 I. C. C. 487 in which the Interstate Commerce Commission made the following finding:

"Intrastate class rates in North Dakota are higher than in the neighboring states of Minnesota, Nebraska, Iowa, and Wisconsin, and in South Dakota, east of the Missouri River. Taking the average of the first four classes for one hundred miles and letting the North Dakota rates represent 100% the percentages for the other states in the order named would be 70.1, 80, 55.6, 75.7 and 84.6%. The record does not show what the relationship would be to the rates in the remainder of South Dakota, or in Montana or in Wyoming."

The order complained of provides for terminal basic rates in North Dakota, for seventeen cities as jobbing centers and readjusts class rates for joint line hauls with a charge of an arbitrary following decision of the Interstate Commerce Commission, and also adjust single line class rates between such jobbing points in North Dakota and other North Dakota points. After that adjustment becomes effective, the class rates in North Dakota will still be higher than intrastate class rates of Minnesota, Nebraska, Iowa, Wisconsin, and eastern South Dakota.

12

Defendants admit paragraph 1 of paragraph 12 of said bill, save and except that the power and authority of the Interstate Commerce Commission is only such as it possesses under Section 13 of the said Transportation Act; in respect thereto said defendants allege that all matters involved in the subject matter of this said Bill of plain-

tiffs can be found and determined in the said proceeding pending before said Interstate Commerce Commission, in which said commission has full and complete jurisdiction to award relief as may be required, under the circumstances shown, and that until said Commission has acted and found [fol. 51] upon the facts and such subject matter this Court is without jurisdiction to anticipate by injunctive relief the decision or findings of said Commission, and there is, therefore, presented upon the whole Bill herein both lack of jurisdiction and want of equity by reason whereof said Bill should be forthwith dismissed, and defendants herein so move and request.

Concerning the second paragraph of paragraph 12 of said bill defendants deby same, and in respect thereto allege that the complainants will not suffer irreparable injury in being compelled to put into effect intrastate class rates in North Dakota that more nearly approximate intrastate class rates in neighboring territories; that if an injunction or restraining order against the order of the Railroad Commission of the State of North Dakota, which is complained of, is granted, the consumers of North Dakota will suffer irreparable injury in this; that the consumers ultimately pay the freight. If lower rates are found justified by the Interstate Commerce Commission, no refunds can be made to the consumers. If any refunds are made, they will be made to retailers who have already passed on the freight charges to the people of the State.

Furthermore, the growth and development of jobbing points are dependent largely upon freight rates, and no reparations can be made for loss of business or retardment of development.

Defendants further allege that said complainants have and possess a full and complete and adequate remedy at law concerning the injury or loss or damage, if any, of which they complain, in the state Courts of North Dakota, with full right of appeal from the decision complained of with rights of a speedy hearing and decision and full and complete means and methods of staying the application of the rates concerning which complaint is made, and that complainant's bill presents entirely want of equity for [fol. 52] granting or allowance of any preliminary re-

straining order, interlocutory injunction or injunction of any kind.

Wherefore the defendants pray that plaintiffs' complaint be in all things dismissed, and that relief therein prayed for be denied.

Dated this 1st day of July 1929.

Board of Railroad Commissioners of the State of North Dakota and C. W. McDonnell, Fay Harding, and Ben C. Larkin, as Members of said Board, by James Morris, Attorney General and Attorney for said Board. H. A. Bronson, Special Assistant Attorney General.

[fol. 53] *Duly sworn to by James Morris. Jurat omitted in printing.*

[fol. 54] EXHIBIT A TO ANSWER

A—Fargo Scale.
B—Board of Railroad Comm'rs' Scale.
C—Minnesota Scale.

	Miles	Classes 1	2	3	4	5	A	B	C	D	E
A	25	30	33	27	21	14	17	13	11	9	7
B	25	27	22	18	15	11	12½	10	8	7	6
C	25	25	21	17½	15	11	12½	9	7½	6½	5
A	50	49	42	34	27	18	21	16	13	11	9
B	50	43	36	27	22	17	17	15	13	10	8
C	50	31½	26	21	16	12½	14½	11	10	8	7
A	80	58	49	41	32	21	25	19	16	13	10
B	80	54	45	36	27	22	22	19	17	13	11
C	80	40½	34	27½	20½	16	18½	14	12	10½	8
A	100	64	54	45	35	23	28	21	17	14	12
B	100	59	51	39	30	23	23	21	18	14	13
C	100	47	38½	31	23	19	21	16	14	11½	9
A	130	73	62	51	40	26	31	24	20	16	13
B	130	67	58	44	35	27	27	23	21	17	14
C	130	55½	46½	37	28	22½	25	19½	16	14	11
A	150	79	67	55	43	28	34	26	21	17	14
B	150	73	62	48	37	29	29	27	22	18	15
C	150	61	51	40½	31	25	28	21	18½	15½	12
A	200	94	80	66	52	34	40	31	25	21	17
B	200	86	74	58	44	35	35	30	27	21	18
C	200	76½	64	51	38½	30½	34½	26½	23	19½	15½

	Miles	Classes 1	2	3	4	5	A	B	C	D	E
A	200	108	92	76	59	39	46	36	29	24	19
B	...	103	87	68	52	41	41	36	32	25	21
C	...	85	71	57	43	34	38½	29½	25½	21	17
A	300	116	99	81	64	42	50	38	31	26	21
B	...	114	97	75	58	45	45	40	35	27	23
C	...	91½	76	61	45½	36½	41½	32½	27½	23	18½
A	300	129	110	90	71	47	56	43	35	28	23
B	...	130	111	86	66	52	52	45	40	32	27
C	...	100½	83½	67	50	40	45	35	30½	25	20½

Authority: N. P. I. . C. No. 8419 and 8504.
G. N. I. C. C. A-6559.
Board of Railroad Commissioner's order in Cases 2255 and 2875.

[fol. 55] AFFIDAVIT IN SUPPORT OF DEFENDANTS' ANSWER

STATE OF NORTH DAKOTA,
County of Burleigh, ss:

E. M. Hendricks, being first duly sworn, deposes and says:

That he is a resident of the State of North Dakota, thirty-nine years of age, and for more than five years last past has been the freight rate expert for the Railroad Commission of the State of North Dakota, and as such expert was present at the hearings held in Cases Nos. 2255 and 2875 resulting in the Order complained of in this action.

That said hearings were had on October 20, 1926, December 14 to 17, inclusive, 1926, and March 19, 1928; that twenty-three witnesses were examined in said proceedings, including this affiant, N. E. Williams, Traffic Commissioner for the Fargo Chamber of Commerce, G. M. Springer, Traffic Manager for the North Dakota Fair Freight Rate Association and member of the firm Springer & Cadieux, Public Traffic Managers, T. A. Durrant, Traffic Commissioner of the Greater Grand Forks Traffic Association. The Railway Companies presented at least five witnesses [fol. 56] whose testimony is part of the record in this case. That these statements are made for the purpose of showing the amount of testimony presented and the magnitude of the proceedings had leading up to the Order complained of.

Affiant further states that many differences exist throughout the State of North Dakota and adjoining States between the rate levels of intrastate and interstate freight rates; that in I. & S. Docket 3018, 144 I. C. C. 487, the Interstate Commerce Commission refused to order increases in interstate class rates, many of which are lower than the class rates proposed by the Order complained of; that these interstate rates are generally lower than the class rates prescribed by the Interstate Commerce Commission in the case of Commercial Club of Fargo vs. A. W. Railway Company, et al., 98 I. C. C. 691.

Affiant further states that in his opinion as a traffic expert familiar with freight rates in the northwest that the freight rates that will become effective by virtue of the Order of the Railroad Commission of the State of North Dakota dated May 8, 1929, would not create a burden upon Interstate Commerce and would not be unjustly nor unlawfully discriminatory and would not result in undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce on the other.

E. M. Hendricks.

Subscribed and sworn to before me this 21 day of June, 1929. Ella Brelje, Notary Public, Burleigh County, State of North Dakota. My Commission expires April 11, 1935.

[fol. 57] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF NEAL E. WILLIAMS—Filed July 2, 1929

STATE OF MINNESOTA,
County of Ramsey, ss:

Neal E. Williams, being first duly sworn, deposes and say:

That he is and has been Traffic Commissioner and traffic advisor to the shippers and receivers of freight in Fargo, North Dakota, and Moorhead, Minnesota, and other points in North Dakota and the Red River Valley of Minnesota since August 1st, 1921; that previous to that time he was

Assistant to Mr. A. E. Cooke, Assistant Chairman of the Western Trunk Line Committee in Chicago, Illinois; that during the past fifteen years of his life, with the exception of fourteen months in the United States Army, have been devoted to the study and application to actual practice of traffic and transportation problems; that on July 6, 1914 he entered the employ of the Minneapolis, St. Paul & Sault Ste Marie Railway Company at Superior, Wis., as Stenographer and Billing Clerk, one year later was made Chief Billing Clerk; that he left the employ of the Minneapolis, St. Paul & Sault Ste Marie Railway Company to enter the service of the Great Northern Railway Company as Chief Clerk in the General Agent's office on May 2nd, 1916; that on July 5, 1917 he was made City Contracting Freight Agent for the Great Northern Railway Company, Duluth, Minnesota, and entered the world war and upon honorable discharge from service returned to the Great Northern Railway Company as Chief Clerk to District Freight Agent, Portland, Oregon, April 1st, 1919 was promoted to Senior Contracting Freight Agent March 1st, 1920 at the expiration of Federal Control of railroads, and resigned this position on September 15, 1920 to attend University; that he has participated in hundreds of cases before the Interstate Commerce Commission in the past nine years and numerous cases before the Board of Railroad Commission, acting as both counsel and witness; that he is familiar with the cases here involved, Nos. 2255 and 2875, and that he acted as counsel and witness for the shippers and receivers at Fargo, N. D. He also acted as witness for the following cities in addition to Fargo; Grand Forks, Valley City, Jamestown, Bismarck, Mandan and Minot, as stated and outlined at page 15 of the record in Case No. [fol. 58] 2255.

Intrastate Freight Rates are Generally Less Than Interstate Freight Rates in Same General Territory

An examination of the intrastate and interstate freight tariffs applicable to class and commodity traffic discloses that in the Western District generally, that is the western section of the United States west of a line drawn from Chicago to St. Louis thence following the Mississippi River to New Orleans, La., that intrastate class freight rate

scales are generally lower than the interstate scales applicable in the same territory. This is likewise true of the so-called Southern Classification territory, that is the territory south of the Ohio River and east of the Mississippi River covered by the investigation of the Interstate Commerce Commission known as the Southern Class Rate Investigation cases, reported 100 I.C.C. 513, 109 I.C.C. 300, 113 I.C.C. 200 and 128 I.C.C. 567. The law does not require that intrastate rates shall be maintained on the exact level of interstae rates, but only that there shall not exist between the two a disparity so substantial as to operate as undue discrimination against and obstruction of interstate commerce (85 I.C.C.-66).

To illustrate the point clearly attention is directed to situation pictured below:

Great Northern Tariff 600-H, I.C.C. A-6559 effective July 31, 1928 provides the following interstate class rate scale from Minnesota or North Dakota points to South Dakota points:

Distance	Classes	1	2	3	4	5	A	B	C	D	E
100 Miles	Interstate...	65½	56½	45	35	26	28	23	20½	15½	14
	Compared with										
100 Miles	South Dakota E. Mo. River intrastate scale....	56	47	37	28	22½	22½	20½	17	14½	11

The same tariff provides the following interstate scale from North Dakota and South Dakota points to Minnesota points:

Distance	Classes	1	2	3	4	5	A	B	C	D	E
150 Miles	Interstate...	81	69	55	43	32½	34	29½	24½	10½	17
	Compared with										
150 Miles	Minnesota Intrastate	61	51	40½	31	25	28	21	18½	15½	12

[fol. 59] Minnesota Class Freight Rates Into North Dakota are Less for Equal Distances than Class Freight Rates Within North Dakota Fixed by North Dakota Board of Railroad Commissioners in This Case, No. 2255

Exhibit "A" attached hereto illustrates how class freight rates apply from certain Minnesota points to North

Dakota points and how these class freight rates compare with the new class freight rates fixed by North Dakota Board of Railroad Commissioners in this case, indicating that the new class freight rates fixed by North Dakota Board of Railroad Commissioners for intrastate application in North Dakota are on a higher level than the interstate class freight rates from certain Minnesota points to North Dakota points. The situation between St. Paul, Minn., and Edgeley, North Dakota, a distance of 351 miles with a first class rate of $1.26½ whereas the regular interstate scale for the distance would be $1.42½ compared with the situation between Fargo, North Dakota and Rider, North Dakota, a distance of 354 miles with a present first class rate of $1.42½ and a class freight rate fixed in this case of $1.28 or 1½¢ higher than the class freight rate from St. Paul, Minn., to Edgeley, North Dakota, for the same mileage block distance of 351 miles. This exhibit pictures practically maximum distances in North Dakota and practically maximum reductions under the North Dakota Board of Railroad Commissioner order in this case, thus demonstrating that the North Dakota Board of Railroad Commissioners have been very conservative in readjusting North Dakota intrastate freight rates.

North Dakota Class Freight Rates Into Minnesota are Much Higher Than Class Freight Rates Within Minnesota for Equal Distances

Moorhead, Minnesota is provided with a first class freight rate to Duluth, Minnesota, for the distance of 250.7 miles of 85¢, whereas Fargo, North Dakota, 251.9 miles from Duluth, Minnesota on direct line only 1.2 miles further distant as measured between freight depots is provided with a first class freight rate of $1.08, a difference over Moorhead, Minn., of 23¢ first class for a difference in distance of only 1.2 miles as measured between freight depots. This is simply but one illustration of disparity between state and interstate freight rates. Thousands of such disparities could be worked out and actually exist between interstate and intrastate freight rates on class and commodity traffic between North Dakota and Minnesota points. [fol. 60] The same situation is true in the so-called Fargo Zone extending under order of Interstate Commerce Com-

mission under case known generally as Fargo Rate Case 98, I. C. C. 691 about 150 miles (figured in rail miles) from Fargo, North Dakota, into Minnesota. Moorhead, Detroit Lakes, Wadena and other Minnesota cities in the so-called Fargo Zone take the so-called Fargo Scale or interstate scale, whereas other points within that zone take the Minnesota distance scale, which is approximately 40% less than the so-called Fargo Scale on class traffic. Freight tariffs covering these situations have been filed legally with both the Minnesota Railroad & Warehouse Commission and the Interstate Commerce Commission. The illustration of Moorhead, Minnesota versus Fargo, North Dakota to Minnesota point of Duluth, Minnesota is carried in Northern Pacific tariff No. 413-0 Interstate Commerce Commission No. 8504 filed effective July 11, 1928 and Northern Pacific Tariff No. 2323-H, Minnesota Railroad & Warehouse Commission No. 973, Interstate Commerce Commission No. 8419 filed effective September 15, 1927.

Present North Dakota Class Freight Rates Compared with Class Freight Rates in South Dakota East of Missouri River, Nebraska, Iowa, Minnesota, and Wisconsin

Exhibit "B" next attached compares present North Dakota intrastate class freight rates with intrastate class freight rates applicable in South Dakota east of Missouri River, in Nebraska, in Iowa, in Minnesota and Wisconsin indicating that North Dakota intrastate class freight rates in effect at this time are much in excess of intrastate class freight rates in neighboring states. This exhibit the Interstate Commerce Commission received in evidence in I. & S. Docket No. 3018 decided June 6, 1928 reported at 144 I. C. C. 487, where the Commission said:

"Intrastate class rates in North Dakota are higher than in the neighboring States of Minnesota, Nebraska, Iowa and Wisconsin, and in South Dakota east of the Missouri River. Taking the average of the first four classes for 100 miles and letting the North Dakota rates represent 100 per cent, the percentages for the other States in the order named would be 70.1, 80, 55.6, 75.7, and 84.6 per cent."

Reduction of Intrastate Class Freight Rates Does Not Necessarily Mean a Reduction in Intrastate Net Revenues

A reduction in intrastate class freight rates does not necessarily mean a reduction in intrastate net revenues. North Dakota cities if placed in a position of being more able to meet competition from without the state will return the rail carriers serving the state additional volume of [fol. 61] freight traffic with increased intrastate revenue just in proportion to the relief granted such cities, thus no irreparable injury or material revenue loss will result to carriers because of readjustment of North Dakota intrastate freight rates for the purpose of removing unjust discriminations as between North Dakota cities and fixing a reasonable per se level of intrastate freight rates putting North Dakota more nearly on a parity with intrastate freight rates in states surrounding North Dakota.

North Dakota cities, firms and individuals will suffer irreparable damage if denied immediate relief granted as result of North Dakota Board of Railroad Commissioners investigation and order in connection with class freight rates involved in this case. North Dakota cities, firms and individuals are not only in competition with cities from without the state in the conduct and development of commerce but actually compete with each other in intrastate commerce. (See Transcript and Cross-examination Williams by Mr. Hagman at pages 280, 281 and 282.) The order of the Board of Railroad Commissioners in Case No. 2255 and Case No. 2875 involved is intended to relieve and adjust inequalities in the freight rate situation as between cities within the State of North Dakota and no bond intended to protect shippers and receivers of freight who actually pay the freight charges through process of refund, can possibly protect the growth and development of North Dakota cities.

Neal E. Williams.

Subscribed and sworn to before me this 2nd day of July, 1929. Jennette M. Dailey, Notary Public, Ramsey County, Minn. My commission expires March 6, 1934. (Seal.)

Hotel Lowry, St. Paul.

[File endorsement omitted.]

[fol. 62] EX. "A" TO AFFIDAVIT OF WILLIAMS

Statement Illustrating How Terminal Rates Apply from St. Paul-Minneapolis-Duluth, Minn., to North Dakota Points and How These Terminal Rates Compare with the New Terminal Rates Fixed by North Dakota Board of Railroad Commissioners in This Case

Between	And	Miles	Present terminal rate, 1st class	Interstate distance scale, 1st class
St. Paul, Minn.	Edgeley, N. D.	351	$1.26½	$1.42½
St. Paul, Minn.	Englevale, N. D.	320	1.16	1.32½
St. Paul, Minn.	McKenzie, N. D.	426	1.49	1.66
St. Paul, Minn.	Brinsmade, N. D.	442	1.55	1.70
Duluth, Minn.	Leal, N. D.	390	1.29	1.54
Duluth, Minn.	Drake, N. D.	471	1.67	1.79

Between	And	Miles	Present 1st class rate	Proposed 1st class rate
Fargo, N. D.	Rider, N. D.	354	$1.42½	$1.28
Fargo, N. D.	South Heart, N. D.	319	1.32½	1.19
Fargo, N. D.	Golva, N. D.	387	1.54	1.39
Fargo, N. D.	Beach, N. D.	374	1.49	1.34
Fargo, N. D.	Ft. Buford, N. D.	375	1.49	1.34
Fargo, N. D.	Killdeer, N. D.	322	1.33½	1.20

Authorities for Rates:

G. N. Ry. N. D. R. C. No. 93.
M., St. P. & S. S. M. Ry. I. C. C. No. 6286.
G. N. Ry. I. C. C. A-6559.
N. P. Ry. I. C. C. No. 8504.

(Here follows Exhibit "B," side folios 63, 64, 65, 66, 67, 68, 69, 70, 71, and 72)

[fol. 73] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF T. A. DURRANT—Filed July 2, 1929

STATE OF MINNESOTA,
County of Ramsey, ss:

T. A. Durrant, being first duly sworn, deposes and says: That he is and has been traffic advisor to the shippers and receivers of freight in the cities of Grand Forks, North Da-

BE

INTERSTATE CO

I&S 3

STATEMENT SHOWIN G THE RELATIVELY HIGH

DISTANCE	SCALE	1	2	3
5 Miles	North Dakota	18½	15½	12
1 "	South Dakota E.Mo.Rvr	16	14	11
"	Nebraska	21	18½	15
"	Iowa	21	18	14
"	Minnesota	18½	15½	12
"	Wisconsin	18½	16	12
10 "	North Dakota	20½	16	13
"	South Dakota E.Mo.Rvr	20½	17½	14
"	Nebraska	23	19½	16
"	Iowa	22½	19½	15
"	Minnesota	20½	16	13
"	Wisconsin	21	18½	14
15 "	North Dakota	21	17½	14
"	South Dakota E.Mo.Rvr	25	20½	16
"	Nebraska	24½	20½	17
"	Iowa	24	20½	16
"	Minnesota	21	17½	14
"	Wisconsin	24½	20½	16
20 "	North Dakota	24½	21	17
"	South Dakota E.Mo.Rvr	27½	23	18
"	Nebraska	26	22	16
"	Iowa	25	21	16
"	Minnesota	22½	19	15
"	Wisconsin	27½	23	18
25 "	North Dakota	29½	24½	20
"	South Dakota E.Mo.Rvr	31½	26	21
"	Nebraska	27½	23	19
"	Iowa	25½	22	17
"	Minnesota	24½	20½	16
"	Wisconsin	28½	24½	19

EXHIBIT "B"

BEFORE THE
INTERSTATE COMMERCE COMMISSION
I&S 3018

WITNESS WILLIAMS EX.___

STATEMENT SHOWING THE RELATIVELY HIGH CHARACTER OF THE NORTH DAKOTA INTRASTATE RATES

SCALE	1	2	3	4	5	A	B	C	D	E	Average of first four classes	Percent of N.D. Scale first four classes
North Dakota	18½	15½	12	9	7	8½	7	5½	5	3½	13.7	100%
South Dakota E.Mo.Rvr	16	14	11	8½	7	7	5½	5	4	3	12.3	89.7%
Nebraska	21	18½	15½	12½	10	11	7	7	5½	3½	16.8	122.6%
Iowa	21	18	14	11	7½	7½	7½	6½	5½	4	16.0	116.7%
Minnesota	18½	15½	12	9	7	8½	7	5½	5	3½	13.7	100%
Wisconsin	18½	16	12	9	7	8½	7	5	4	3½	13.8	100.7%
North Dakota	20½	16	13½	10	8	9	7	6½	5	4	15.0	100%
South Dakota E.Mo.Rvr	20½	17½	14½	11	8½	8½	7	6½	5	4	15.8	105.3%
Nebraska	23	19½	16	14	10½	11½	8	7	6½	4	18.1	120.6%
Iowa	22½	19½	15½	11½	8	8	8	7	6	4½	17.2	114.6%
Minnesota	20½	16	13½	10	8	9	7	6½	5	4	15.0	100%
Wisconsin	21	18½	14	11	8½	10	7	6½	5	4	16.1	107.3%
North Dakota	21	17½	14	11	8½	10	8	7	5½	5	15.8	100%
South Dakota E.Mo.Rvr	25	20½	16	12	10	10	8½	7	6½	5	18.3	115.8%
Nebraska	24½	20½	17	14½	11	12	8½	7	6½	4	19.1	120.8%
Iowa	24	20½	16	11½	8	8½	8	7	6	4½	18.0	113.9%
Minnesota	21	17½	14	11	8½	10	7	7	5½	4	15.8	100%
Wisconsin	24½	20½	16	12	10	11	8½	7	5½	5	18.2	115.1%
North Dakota	24½	21	17	12	9	10½	9	8	6½	5	18.6	100%
South Dakota E.Mo.Rvr	27½	23	18½	14	11	11	10	8½	7	5½	20.7	111.2%
Nebraska	26	22	18½	16	11½	12½	9	8	7	4	20.6	110.7%
Iowa	25	21	16½	12½	8½	9	8½	7½	6½	5	18.7	100.5%
Minnesota	22½	19	15½	11½	9	10½	8	7	5½	5	17.1	91.9%
Wisconsin	28½	23	18½	14	11	12½	10	7	6½	5½	20.7	111.2%
North Dakota	29½	24½	20½	15½	12	12	11	9	8	6½	22.5	100%
South Dakota E.Mo.Rvr	31½	26	21	16	12½	12½	11	10	8½	6½	23.6	104.8%
Nebraska	27½	23	19½	16	12	14	10	8½	7	5	21.5	95.5%
Iowa	25½	22	17	13	9	9	9	7½	6½	5	19.3	85.7%
Minnesota	24½	20½	16	12	10	11	8½	7	6½	5	18.2	80.8%
Wisconsin	28½	24½	19½	14½	11½	12½	10½	8	7	6½	21.7	96.4%

Sheet No. 2

INTRASTATE SCALE COMPARISONS:

DISTANCE	SCALE	1	2	3	4	5	A	B	C	D	E	Average of first four classes	Percent of North Dakota Scale first four classes
ALL CLASS RATES IN NORTH DAKOTA ARE SUBJECT TO RULE No. 275 UP TO THE 25 MILE BLOCK - Rule No. 275 is minimum class rate rule as follows:													
	Classes.....	25	21	17½	15	11	12½	9	7½	6½	5	19.6	
No rate shall be applied on any traffic moving under class rates lower than the amount in cents per 100 pounds for the respective classes as shown above.													
30 Miles	North Dakota	33⅓	29⅓	23	17	14	14	12	11	8	6½	25.7	100%
" "	South Dakota E. Mo. Rvr.	34	28⅓	22⅓	17	14⅓	14⅓	11⅓	10⅓	9	7	25.5	99.2%
" "	Nebraska	29⅓	25	20⅓	17⅓	13⅓	14⅓	10⅓	8⅓	7	5	23.1	69.6%
" "	Iowa	26⅓	23	18	13⅓	9⅓	9⅓	9⅓	8	7	5½	20.2	78.5%
" "	Minnesota	25⅓	21	17	12⅓	10⅓	11⅓	9	8	7	5½	19.0	73.9%
" "	Wisconsin	30⅓	25½	20½	15½	12	13⅓	10½	8	7	6½	23.0	89.4%
35 Miles	North Dakota	38⅓	32½	26	20½	15½	15½	14	12	9	8	29.3	100%
" "	South Dakota E. Mo. Rvr.	37	31⅓	25	18⅓	15⅓	15⅓	12½	11½	10	7	26.0	95.5%
" "	Nebraska	30½	26	21	18½	14	15½	11	9	8	5½	24.0	81.9%
" "	Iowa	27⅓	23½	18½	14	10	10	10	8½	7	5½	20.6	70.9%
" "	Minnesota	27⅓	22⅓	18½	13⅓	11	12	10	8	7	5½	20.5	69.9%
" "	Wisconsin	31⅓	26⅓	20½	16	12½	14	11	8½	7	6½	23.6	80.5%
40 Miles	North Dakota	41½	35	27½	21	17	17	14	12	9	8	31.2	100%
" "	South Dakota E. Mo. Rvr.	39⅓	33	26⅓	20½	16	16	14⅓	11½	10½	8½	29.8	95.5%
" "	Nebraska	32⅓	27⅓	22⅓	19⅓	14⅓	13	11⅓	10	8	5⅓	25.5	81.7%
" "	Iowa	28⅓	24⅓	19	14⅓	10	10	10	8½	7	6	21.6	69.2%
" "	Minnesota	28⅓	24	19½	14⅓	11⅓	12½	10⅓	8⅓	7	6½	21.6	69.2%
" "	Wisconsin	33	26	22	16	13⅓	14⅓	11⅓	9	7	7	24.7	79.1%
45 Miles	North Dakota	44⅓	37½	29½	23	18½	18½	15½	14	11	9	33.8	100%
" "	South Dakota E. Mo. Rvr.	41⅓	34	26⅓	20⅓	16	16	14⅓	12	10½	8½	30.6	90.5%
" "	Nebraska	33⅓	28½	24	20⅓	15½	17	11⅓	10½	8⅓	5⅓	26.6	78.6%
" "	Iowa	29⅓	25	20	15	10⅓	10½	10⅓	9	7½	6	22.3	65.9%
" "	Minnesota.	30⅓	25	20½	15½	12	13⅓	10⅓	9	8	6½	22.8	67.4%
" "	Wisconsin	34	29½	23	17	14	15⅓	12	9	8	7	25.8	76.3%
50 "	North Dakota	47½	39½	30½	24½	18½	18½	17	14	11	9	35.5	100%
" "	South Dakota E. Mo. Rvr.	43	36	28	21	17	17	15½	12½	11	8½	32.0	90.1%
" "	Nebraska	35	29½	24½	21	16	17½	12	10⅓	9	6⅓	27.5	78.5%
" "	Iowa	30½	25⅓	20⅓	15⅓	11	11	11	9	7½	6½	23.0	64.7%
" "	Minnesota	31⅓	26	21	16	12½	14½	11	10	8	7	23.6	66.4%
" "	Wisconsin	36	30½	24	17½	14⅓	16	12½	10	8	7	27.0	76.0%

Sheet No. 3.

INTRSTATE SCALE COMPARISONS

DISTANCE	SCALE	1	2	3	4	5	A	B	C	D	E	Average of First Four Classes	Percent of North Dakota scale first four classes
55 Miles	North Dakota	50½	43	33½	26	20½	20½	18½	15½	12	11	38.2	100%
" "	South Dakota E.Mo.Rvr	43½	37	28½	22	17	17	16	12½	11	9	32.7	85.6%
" "	Nebraska	36½	31	25½	22	16	18½	12½	11	9	6½	28.7	75.1%
" "	Iowa	31	26	20½	15½	11	11	11	9½	7½	6½	23.2	60.7%
" "	Minnesota.	33½	28	22	16	13½	15½	11½	10	6½	7	24.8	64.9%
" "	Wisconsin	37	31½	25	19	14½	16	12½	10½	8	7	28.1	73.5%
60 Miles	North Dakota	53½	45½	35	27½	21	21	18½	17	12	11	40.3	100%
" "	South Dakota E.Mo.Rvr	45	38½	29½	22½	16½	18½	16	14	11½	9	33.8	83.6%
" "	Nebraska	38½	32½	26½	23	17	19	13½	11½	10	7	30.1	74.6%
" "	Iowa	31½	27	21	16	11½	11½	11½	9½	8	6½	23.8	59.0%
" "	Minnesota	34½	29½	23	17½	14	16	12	10½	6½	7	26.1	64.7%
" "	Wisconsin	38½	33	25½	19½	15½	17	13½	10½	6½	8	29.1	72.2%
65 Miles	North Dakota	55	47½	36½	27½	21	21	20½	17	14	11	41.6	100%
" "	South Dakota E.Mo. Rvr	47	39½	31	23	18½	18½	16	14½	11½	10	35.1	84.3%
" "	Nebraska	39½	33½	28	24	17½	20½	14	12	10	7	31.2	75.0%
" "	Iowa	32½	27½	21½	16	11½	11½	11½	10	8	7	24.3	58.4%
" "	Minnesota	36½	30½	24½	18½	14½	16	12½	11	9	7	27.5	66.1%
" "	Wisconsin	39½	34	26½	20½	16	17½	14	11	8½	8	30.1	72.3%
70 Miles	North Dakota	56½	47½	36½	29½	23	23	20½	17	14	11	42.3	100%
" "	South Dakota E.Mo.Rvr	48	39½	31½	24	19½	19½	17	14½	12	10	35.7	84.3%
" "	Nebraska	41½	35	28½	25	19	20½	14½	12	10½	7	32.5	76.6%
" "	Iowa	33	28	22	16	11½	11½	11½	10	8	7	24.7	58.3%
" "	Minnesota	38	31½	25	19	15½	17	13½	11½	10	7	28.3	66.9%
" "	Wisconsin	41½	35	27½	20½	16	19	14½	11	9	8½	31.1	73.5%
75 Miles	North Dakota	57½	48½	38½	29½	23	23	20½	17	14	12	43.5	100%
" "	South Dakota E.Mo.Rvr	49	41½	32½	25	20½	20½	17	15½	12	10	37.0	85%
" "	Nebraska	43	36½	29½	25½	19½	21	15½	12½	11	7	33.6	77.2%
" "	Iowa	33½	28½	22½	16½	11½	12	11½	10	6½	7	25.2	57.9%
" "	Minnesota	38½	33	26	19½	16	17½	14	11½	10	8	29.2	67.1%
" "	Wisconsin	43	36	28½	21	17	19½	15½	11½	9	8½	32.1	73.7%
80 Miles	North Dakota	59½	50½	39½	30½	24½	24½	21	16½	14	12	45.0	100%
" "	South Dakota E.Mo.Rvr	50½	43	34	25½	20½	20½	17½	15½	12½	10½	38.2	84.6%
" "	Nebraska	44½	38	31	26½	20½	22	16	13½	11	7	35.0	77.7%
" "	Iowa	34	29	22½	17	11½	12½	11½	10½	8½	7	25.6	56.8%
" "	Minnesota	40½	34	27½	20½	16	18½	14	12	10½	8	30.6	68.0%
" "	Wisconsin	43½	37	29½	22	17½	20½	15½	12	10	8½	33.0	73.3%

Sheet No. 4

INTRASTATE SCALE COMPARISONS

DISTANCE	SCALE	1	2	3	4	5	A	B	C	D	E	Average of first four classes	Percent of North Dakota scale first four classes
85 Miles	North Dakota	61	52	39½	30½	24½	24½	21	16½	15½	12	45.7	100%
" "	South Dakota E.Mo.Rvr	52	43½	34	26	21	21	18½	16	12½	10½	38.8	84.9%
" "	Nebraska	45½	38½	32½	27½	20½	23	16	14	11½	8	36.0	78.7%
" "	Iowa	34½	29½	23	17	12	12½	12	10½	8½	7	26.0	56.8%
" "	Minnesota	42	35	28	21	17	19	14½	12½	10½	8½	31.5	68.9%
" "	Wisconsin	45	38½	30½	22½	16½	20½	16	12	10	9	34.1	74.6%
90 Miles	North Dakota	62½	53½	41½	32½	24½	24½	21	18½	15½	12	47.5	100%
" "	South Dakota E.Mo.Rvr	53½	45	34	26½	21	21	18½	16	14	11	39.7	83.5%
" "	Nebraska	47½	40	33	28½	21	24	16	14	12	8	37.2	78.3%
" "	Iowa	35	30	23½	17½	12	13	12	11	9	7	26.5	55.7%
" "	Minnesota	43½	36½	29½	22	17½	19½	15½	13½	11	8½	32.8	69.0%
" "	Wisconsin	47	39½	31	23	19	21	16	12½	10½	9	34.1	71.7%
95 Miles	North Dakota	64	55	43	32½	26	26	23	20½	15½	12	48.6	100%
" "	South Dakota E.Mo.Rvr	55	47	36	27½	22	22	19½	16	14	11	41.3	84.9%
" "	Nebraska	46½	41½	34	29½	22	24½	17	14½	12	8½	38.3	78.8%
" "	Iowa	36	30½	24	18	12½	13½	12½	11	9	7	27.1	55.7%
" "	Minnesota	45	38	30½	22½	18½	20½	16	13½	11½	9	34.0	69.9%
" "	Wisconsin	48	40½	32½	24½	19½	22	17	12½	10½	10	36.3	74.6%
100 Miles	North Dakota	65½	56½	43	33½	26	26	23	20½	15½	14	49.6	100%
" "	South Dakota E.Mo.Rvr	56	47	37	28	22½	22½	20½	17	14½	11	42.0	84.6%
" "	Nebraska	50½	43	35	30½	22½	25	17½	15½	12½	8½	39.7	80.0%
" "	Iowa	36½	31	24½	16½	12½	13½	12½	11	9	7	27.6	55.6%
" "	Minnesota	47	36½	31	23	19	21	16	14	11½	9	34.8	70.1%
" "	Wisconsin	49	42	33	25	20½	22½	17	13½	11	10	37.2	75.0%
105 Miles	North Dakota	67	56½	44½	33½	27½	27½	23	20½	17	14	50.3	100%
" "	South Dakota E.Mo.Rvr	59	49	38½	29½	24	24	21	18½	15½	11½	44.0	87.4%
" "	Nebraska	52	43½	36½	31	23	26	18½	16	12½	9	40.7	80.9%
" "	Iowa	38	32	25	19	13	14½	13	11½	9½	7½	28.5	56.6%
" "	Minnesota	46	40	32½	24½	19½	22	17	14½	12	10	36.2	71.9%
" "	Wisconsin	50½	43	33½	25½	20½	22½	17½	13½	11	10½	38.1	75.7%
110 Miles	North Dakota	69	57½	45½	35	27½	27½	24½	21	17	14	51.7	100%
" "	South Dakota EMoRvr	59	49	38½	29½	24	24	21	18½	15½	11½	44.0	85.1%
" "	Nebraska	53½	45½	37	32½	24½	26½	19	16	13½	9	42.1	81.4%
" "	Iowa	36½	32½	25	19½	13½	15	13½	11½	9½	7½	28.8	55.7%
" "	Minnesota	50	41½	33	25	20½	22½	17½	15½	12	10	37.3	72.1%
" "	Wisconsin	52	43½	34	25½	20½	23	18½	14	11½	10½	38.7	74.8%

Sheet No. 5

INTRASTATE SCALE COMPARISONS

DISTANCE	SCALE	1	2	3	4	5	A	B	C	D	E	Average of first four classes	Percent of North Dakota Scale first four classes
115 Miles	North Dakota	70	59½	45½	35	27½	27½	24½	21	17	14	52.5	100%
" "	South Dakota E. Mo. Rvr	61	52	40	31	25½	25½	21	18½	16	12½	46.0	87.6%
" "	Nebraska	55	47	38½	33	25	27½	19½	16	14	9	43.3	82.4%
" "	Iowa	40	33½	25½	20	14	15½	14	11½	10	6	29.7	56.5%
" "	Minnesota	51	43	34	25½	20½	23	17½	15½	12½	10½	38.3	72.9%
" "	Wisconsin	52	44½	35	26	20½	24	18½	14	11½	10½	39.3	74.8%
120 Miles	North Dakota	71½	61	47½	36½	29½	29½	24½	21	17	14	54.1	100%
" "	South Dakota E. Mo. Rvr	61	52	40	31	25½	25½	21	18½	16	12½	46.0	85%
" "	Nebraska	56½	48	39½	34	25½	28	20½	17	14	10	44.5	82.2%
" "	Iowa	41½	34	26½	20½	14½	16	14	12	10½	8	30.6	56.5%
" "	Minnesota	52	43½	35	26	21	24	18½	16	13½	10½	39.1	72.2%
" "	Wisconsin	53½	45½	36	26½	21	24½	19	14½	11½	11	40.3	74.4%
125 Miles	North Dakota	73	62½	48½	36½	29½	29½	26	21	18½	15½	55.1	100%
" "	South Dakota E. Mo. Rvr.	64½	53½	43	32½	25½	25½	22½	20½	17	12½	48.3	87.6%
" "	Nebraska	57½	49	40½	34½	26	29½	20½	17½	14½	10	45.3	82.2%
" "	Iowa	43	34½	27	20½	15	16	14½	12½	10½	8½	31.2	56.6%
" "	Minnesota	54	45	36	27½	22	24½	19	16	13½	11	40.6	73.6%
" "	Wisconsin	55	46½	36½	27½	22	25	19½	14½	12	11	41.3	74.9%
130 Miles	North Dakota	74½	64	48½	38½	30½	30½	26	23	18½	15½	56.3	100%
" "	South Dakota E. Mo. Rvr.	64½	53½	43	32½	25½	25½	22½	20½	17	12½	48.3	85.7%
" "	Nebraska	59½	50½	41½	36	26½	29½	20½	17½	15½	10½	46.8	83.1%
" "	Iowa	43½	35½	27½	21	15½	16½	15	12½	11	8½	31.8	56.4%
" "	Minnesota	55½	46½	37	28	22½	25	19½	16	14	11	41.7	74.0%
" "	Wisconsin	56	47½	37	28	22½	25	19½	15½	12	11	42.1	74.7%
135 Miles	North Dakota	76	65½	50½	38½	30½	30½	27½	23	18½	15½	57.6	100%
" "	South Dakota E. Mo. Rvr.	67	56	45	33½	26½	26½	24	20½	17	14½	50.3	87.3%
" "	Nebraska	61	52	43	36½	27½	30½	21	18½	15½	10½	48.1	83.5%
" "	Iowa	45	36	28	21½	16	17	15½	13	11	9	32.6	56.5%
" "	Wisconsin	56½	48	38	28½	22½	25½	20½	15½	12½	11½	42.7	74.1%
" "	Minnesota	57	47½	38½	28½	23	25½	20½	17	14½	11½	42.8	74.3%
140 Miles	North Dakota	78	65½	52	39½	30½	30½	27½	23	18½	15½	58.7	100%
" "	South Dakota E. Mo. Rvr.	67	56	45	33½	26½	26½	24	20½	17	14½	50.3	85.6%
" "	Nebraska	62½	52½	43½	38	28	31	22	19	16	11	49.1	83.6%
" "	Iowa	46½	37	28½	22	16	18	15½	13½	11½	9½	33.5	57.0%
" "	Minnesota	58½	48½	38½	29½	24	26	20½	17½	14½	11½	43.7	74.4%
" "	Wisconsin	57½	49	38½	29½	23	26	20½	16	12½	11½	43.6	74.2%

Sheet No. 6

INTRASTATE SCALE COMPARISONS

DISTANCE	SCALE	1	2	3	4	5	A	B	C	D	E	Average of First Four Classes	Percent of North Dakota Scale first four classes
145 Miles	North Dakota	79	67	52	39½	32½	32½	27½	24½	16½	15½	59.3	100%
" "	South Dakota E.Mo.Rvr.	70	59	47	34½	28	28	25½	21	16½	14½	52.6	88.7%
" "	Nebraska	64	54	45	38½	28½	32½	22½	19½	16	11	50.3	84.8%
" "	Iowa	47½	38	29½	23	16½	18½	16	13½	11½	9½	34.5	58.1%
" "	Minnesota	60½	50	40	29½	24½	26½	21	18½	15½	12	45.0	75.8%
" "	Wisconsin	59	50	39½	29½	24	26½	20½	16	12½	11½	44.5	75.0%
150 Miles	North Dakota	81	69	53½	41½	32½	32½	29½	24½	20½	17	61.2	100%
" "	South Dakota E. Mo. Rvr.	70	59	47	34½	28	28	25½	21	16½	14½	52.6	85.9%
" "	Nebraska	65½	56	45½	39½	29½	33	23	19½	16	11	51.6	84.3%
" "	Iowa	48½	38½	29½	23½	17	19	16	14	11½	10	35.0	57.1%
" "	Minnesota	61	51	40½	31	25	28	21	18½	15½	12	45.6	74.6%
" "	Wisconsin	60½	51	40	29½	24	26½	21	16	13½	12	45.2	73.8%
155 Miles	North Dakota	82	70	55	41½	33½	33½	29½	24½	20½	17	62.1	100%
" "	South Dakota E.Mo.Rvr.	72½	60½	49	36½	29½	29½	25½	22½	16½	14½	54.6	87.9%
" "	Nebraska	67	57	47	40	30½	33½	24	20½	17	11½	52.7	84.8%
" "	Iowa	50	39	30	24	17½	19½	16½	14½	12	10	35.7	57.4%
" "	Minnesota	63	52	42	31½	25½	28½	22	19	16	12½	47.1	75.8%
" "	Wisconsin	61	52	40½	30½	24½	27½	21	16	13½	12	46.0	74.0%
160 Miles	North Dakota	83½	71½	55	43	33½	33½	29½	26	20½	17	63.2	100%
" "	South Dakota E.Mo.Rvr.	72½	60½	49	36½	29½	29½	25½	22½	18½	14½	54.6	86.4%
" "	Nebraska	69	58½	48	41½	31	34	24½	20½	17	11½	54.2	85.7%
" "	Iowa	51	40	30½	24½	18	20½	17	14½	12	10½	36.5	57.7%
" "	Minnesota	64½	53½	43	32½	25½	29½	22½	19½	16	12½	48.3	76.4%
" "	Wisconsin	63	52½	41½	31	25	26	22	17	14	12	46.7	73.8%
165 Miles	North Dakota	85	73	56½	43	33½	33½	30½	26	20½	17	64.3	100%
" "	South Dakota E.Mo.Rvr.	75	63	50½	38	31	31	26½	22½	20½	16	56.6	88.0%
" "	Nebraska	70	59½	49	42	31½	35	24½	21	17½	12	55.1	85.6%
" "	Iowa	52	40½	31½	25	18½	20½	17	15	12½	10½	37.2	57.8%
" "	Minnesota	66	55	43½	33	26	29½	23	20½	16	13½	49.3	76.6%
" "	Wisconsin	63	53½	42	31½	25	28½	22	17	14	12½	47.5	73.8%
170 Miles	North Dakota	87	73	57½	44½	35	35	30½	26	21	17	65.5	100%
" "	South Dakota E.Mo.Rvr.	75	63	50½	38	31	31	26½	22½	20½	16	56.6	86.4%
" "	Nebraska	71½	61	50	43	32½	36	25	21	16½	12	56.3	85.9%
" "	Iowa	53½	41½	32½	25	19	21	17½	15½	12½	11	38.1	58.1%
" "	Minnesota	67½	56	45	34	26½	30½	24	20½	17	13½	50.6	77.2%
" "	Wisconsin	64½	55	43	32½	25½	29½	22½	17½	14	12½	48.7	74.3%

Sheet No.7

INTRASTATE SCALE COMPARISONS

DISTANCE	SCALE	1	2	3	4	5	A	B	C	D	E	Average of First Four Classes.	Percent of North Dakota Scale first four classes
175 Miles	North Dakota	88	74½	57½	44½	35	35	30½	26	21	16½	66.1	100%
" "	South Dakota E.Mo.Rvr.	78	65½	52	38½	31	31	28	24	20½	16	58.5	88.5%
" "	Nebraska	73	62	51	43½	33	36½	25½	22	18½	12½	57.3	86.6%
" "	Iowa	55	42½	32½	25½	19½	21½	18	15½	13	11	38.8	58.6%
" "	Minnesota	69	57½	46½	34½	27½	31	24½	20½	17	14	51.6	78.3%
" "	Wisconsin	65	55½	43½	33	26	29½	23	17½	14½	13½	49.2	74.4%
180 Miles	North Dakota	90	76	59½	45½	36½	36½	32½	27½	21	16½	67.7	100%
" "	South Dakota E.Mo.Rvr.	78	65½	52	38½	31	31	28	24	20½	16	58.5	86.4%
" "	Nebraska	74½	63	52	45	33½	37	26	22½	19	12½	56.6	86.5%
" "	Iowa	56	43	33	26	20	22	16½	16	13	11½	39.5	58.3%
" "	Minnesota	70½	59	47	35	28	31½	25	21	17½	14	52.6	77.9%
" "	Wisconsin	66	56½	44½	33½	26	29½	23	18½	14½	13½	50.1	74.0%
185 Miles	North Dakota	91½	78	61	45½	36½	36½	32½	27½	21	16½	69.0	100%
" "	South Dakota E.Mo.Rvr.	81	69	55	40	32½	32½	28	24	21	17	60.7	87.9%
" "	Nebraska	76	64½	53½	45½	34	38½	26½	23	19	12½	59.8	86.6%
" "	Iowa	57	43½	33½	26½	20½	22½	19	16	13½	11½	40.1	58.1%
" "	Minnesota	71½	60½	48	36	26½	32½	25	22	16½	14½	54.0	78.2%
" "	Wisconsin	67½	57	45	34	26½	30½	24	18½	14½	13½	50.8	73.6%
190 Miles	North Dakota	93	79	61	47½	36½	36½	32½	27½	23	18½	70.1	100%
" "	South Dakota E.Mo.Rvr.	81	67	55	40	32½	32½	28	24	21	17	60.7	86.5%
" "	Nebraska	78	66	54	47	35	38½	27½	23	19½	13½	61.2	87.3%
" "	Iowa	58½	44½	34	27	20½	23	19	16	14	11½	41.0	58.4%
" "	Minnesota	73½	61	49	36½	29½	33	25½	22	18½	14½	55.0	78.4%
" "	Wisconsin	69	58½	45½	34	26½	31	24½	19	15½	14	51.7	73.7%
195 Miles	North Dakota	94	81	62½	47½	38½	38½	33½	29½	23	18½	71.2	100%
" "	South Dakota E. Mo.Rvr.	83½	70	56	42	33½	33½	29½	25½	21	17	62.8	88.2%
" "	Nebraska	79	67½	55½	47½	36	39½	28	24	20½	13½	62.3	87.5%
" "	Iowa	59½	45	34½	28	21	23½	19½	16½	14	11½	41.7	58.5%
" "	Minnesota	74½	62½	50	38	29½	34	26	22½	19	15½	56.2	78.9%
" "	Wisconsin	69½	59	46½	34½	27½	31½	24½	19	15½	14	52.3	73.4%
200 Miles	North Dakota	96	82	64	48½	38½	38½	33½	29½	23	20½	72.6	100%
" "	South Dakota E. Mo. Rvr.	83½	70	56	42	33½	33½	29½	25½	21	17	62.8	86.5%
" "	Nebraska	81	69	56½	48½	36½	40	28½	24½	20½	14	63.7	87.7%
" "	Iowa	61	46	35	28½	21½	24½	20	16½	14½	12	42.6	58.6%
" "	Minnesota	76½	64	51	38½	30½	34½	26½	23	19½	15½	57.5	79.2%
" "	Wisconsin	70½	60½	47	35	27½	31½	25	19	16	14	53.2	73.2%

Sheet No. 8

INTRASTATE SCALE COMPARISONS

DISTANCE	SCALE	1	2	3	4	5	A	B	C	D	E	Average of First Four Classes	Percent of North Dakota Scale first four classes
205 Miles	North Dakota	97	82	64	46½	39½	39½	33½	29½	23	20½	72.8	100%
" "	South Dakota E.Mo. Rvr.	87½	74½	59	43½	34½	34½	31	26½	22½	18½	66.1	90.7%
" "	Nebraska	83½	71	56½	50½	38	42	29½	25	21	14½	65.8	90.3%
" "	Iowa	63	47½	36	29½	22½	25	20½	17½	15	13	44.0	60.4%
" "	Minnesota	78	65	52	38½	31	35	27½	24	19½	16	58.3	80.0%
" "	Wisconsin	72½	61	48½	36	27½	33	25½	19½	16	14½	54.5	74.8%
210 Miles	North Dakota	99	83½	65½	50½	39½	39½	35	30½	24½	20½	74.6	100%
" "	South Dakota E.Mo.Rvr.	87½	74½	59	43½	34½	34½	31	26½	22½	18½	66.1	88.6%
" "	Nebraska	83½	71	58½	50½	38	42	29½	25	21	14½	65.8	88.2%
" "	Iowa	63	47½	36	29½	22½	25	20½	17½	15	13	44.0	58.9%
" "	Minnesota	78	65	52	38½	31	35	27½	24	19½	16	58.3	78.1%
" "	Wisconsin	72½	61	48½	36	27½	33	25½	19½	16	14½	54.5	73.0%
215 Miles	North Dakota	100½	85	67	50½	39½	39½	35	30½	24½	20½	75.7	100%
" "	South Dakota E. Mo. Rvr.	87½	74½	59	43½	34½	34½	31	26½	22½	18½	66.1	87.3%
" "	Nebraska	87	73½	61	52	38½	43	30½	26	22	14½	68.3	90.2%
" "	Iowa	65½	49	37	30	23½	26	21	18	15½	13	45.3	59.8%
" "	Minnesota	79½	66	52½	39½	31½	36	28	24	20½	16	59.3	78.3%
" "	Wisconsin	74½	63	50	36	28	33½	26	20½	16	15½	55.8	73.7%
220 Miles	North Dakota	102	87	67	52	41½	41½	35	30½	24½	20½	77.0	100%
" "	South Dakota E. Mo. Rvr.	87½	74½	59	43½	34½	34½	31	26½	22½	18½	66.1	85.8%
" "	Nebraska	87	73½	61	52	38½	43	30½	26	22	14½	68.3	88.7%
" "	Iowa	65½	49	37	30	23½	26	21	18	15½	13	45.3	58.8%
" "	Minnesota	79½	66	52½	39½	31½	36	28	24	20½	16	59.3	77.0%
" "	Wisconsin	74½	63	50	36	28	33½	26	20½	16	15½	55.8	72.4%
225 Miles	North Dakota	103½	88	69	52	41½	41½	36½	30½	24½	21	78.1	100%
" "	South Dakota E. Mo. Rvr.	92	76½	61	45½	36½	36½	32½	28	24	18½	68.7	87.9%
" "	Nebraska	90	76½	62½	54	40½	45	31½	26½	22½	15½	70.7	90.5%
" "	Iowa	68	50½	38½	31	24½	27	22	19	16	13½	46.8	59.9%
" "	Minnesota	61	67½	54	40½	32½	36½	28½	24½	20½	16	60.7	77.7%
" "	Wisconsin	76½	65	51	36	28	34	26½	20½	17	15½	57.1	73.1%
230 Miles	North Dakota	105½	90	70	53½	43	43	36½	32½	26	21	79.7	100%
" "	South Dakota E.Mo.Rvr.	92	76½	61	45½	36½	36½	32½	28	24	18½	68.7	86.1%
" "	Nebraska	90	76½	62½	54	40½	45	31½	26½	22½	15½	70.7	88.7%
" "	Iowa	68	50½	38½	31	24½	27	22	19	16	13½	47.0	58.9%
" "	Minnesota	61	67½	54	40½	32½	36½	28½	24½	20½	16	60.7	76.1%
" "	Wisconsin	76½	65	51	36	28	34	26½	20½	17	15½	57.1	71.6%

Sheet No. 9

INTRASTATE SCALE COMPARISONS:

DISTANCE	SCALE	1	2	3	4	5	A	B	C	D	E	Average of first four classes	Percent of North Dakota Scale first four classes.
235 Miles	North Dakota	106	91½	70	53½	43	43	36½	32½	26	21	80.2	100%
" "	South Dakota E.Mo.Rvr	92	76½	61	45½	36½	36½	32½	26	24	18½	68.7	85.6%
" "	Nebraska	93	79	65	56	42	46½	33	26	23	16	73.2	91.2%
" "	Iowa	70½	52	39	32½	25	28	22½	19½	16	14	48½	60.4%
" "	Minnesota	82	69	55	41½	33	37	28½	25	20½	16	61.8	77.0%
" "	Wisconsin	78½	67	52	36½	28½	34½	27½	21	17½	16	58½	72.9%
240 Miles	North Dakota	108	91½	71½	55	43	43	36½	32½	26	21	81.5	100%
" "	South Dakota E.Mo.Rvr	92	76½	61	45½	36½	36½	32½	28	24	18½	68.7	84.2%
" "	Nebraska	93	79	65	56	42	46½	33	28	23	16	73.2	89.5%
" "	Iowa	70½	52	39	32½	25	26	22½	19½	16	14	48.5	59.5%
" "	Minnesota	82	69	55	41½	33	37	28½	25	20½	16	61.8	75.6%
" "	Wisconsin	78½	67	52	36½	28½	34½	27½	21	17½	16	58½	71.7%
260 Miles	North Dakota	114½	97	76	57½	45½	45½	39½	35	27½	23	86.2	100%
" "	South Dakota E.Mo.Rvr	96	81	64½	48	38½	38½	33½	29½	24	20½	72.3	83.8%
" "	Nebraska	99	83½	69½	59½	44½	49	34½	29½	25	17	77.8	90.2%
" "	Iowa	75	55	41½	34	27	30	24	20½	17	15	51.3	59.5%
" "	Minnesota	85	71	57	43	34	38½	29½	25½	21	17	64.0	74.2%
" "	Wisconsin	82	70	55	36½	29½	36	28½	22½	18½	16	60.8	70.5%
280 Miles	North Dakota	120	102	79	61	48½	48½	43	36½	29½	24½	90.5	100%
" "	South Dakota E.Mo.Rvr	99½	83½	67	50	40	40	34½	31	25½	20½	75.0	82.8%
" "	Nebraska	105½	89	73½	63	47½	52	37	31½	26	17½	82.7	91.3%
" "	Iowa	80	58½	43½	36	28½	32½	25	21½	18½	16	54.5	60.2%
" "	Minnesota	88	73½	59	44½	35	39½	31	26½	22	17½	66.2	73.1%
" "	Wisconsin	85	72½	56½	37	29½	37	29½	24	19½	17½	62.7	69.2%
300 Miles	North Dakota	126½	108	83½	64	50½	50½	44½	38½	30½	26	95.5	100%
" "	South Dakota E.Mo.Rvr	104	87½	70	52	42	42	36½	32½	26½	21	76.3	81.9%
" "	Nebraska	111	94	78	67	50	55½	38½	33½	28	19	87.5	91.6%
" "	Iowa	85	61	45½	38	30½	34	26½	23	19	16½	57.3	60.0%
" "	Minnesota	91½	76	61	45½	36½	41½	32½	27½	23	18½	68.5	71.7%
" "	Wisconsin	88	74½	59	38	29½	38	29½	25	20½	18½	64.8	67.6%

Sheet No. 10

INTRASTATE SCALE COMPARISONS

DISTANCE	SCALE	1	2	3	4	5	A	B	C	D	E	Average of First Four Classes	Percent of North Dakota Scale first four classes
320 Miles	North Dakota	132½	112½	87	67	53½	53½	45½	39½	32½	27½	99.7	100%
" "	South Dakota E.Mo.Rvr	108	90½	72½	54	43	43	36	32½	26	22½	81.2	81.4%
" "	Nebraska	117½	99½	82	70½	52½	56½	41½	35	29½	20½	92.3	92.5%
" "	Iowa	56½	62	47½	39½	32	35½	28	24½	20½	18½	58.8	58.9%
" "	Minnesota	94	78½	62½	47½	38	43	33	28½	24	19	70.6	70.8%
340 Miles	North Dakota	136½	117½	91½	70	55	55	48½	41½	33½	27½	104.3	100%
" "	South Dakota E.Mo.Rvr	112½	94	75	56	44½	44½	38½	33½	28	22½	84.3	80.8%
" "	Nebraska	123½	104½	86½	74½	55½	61	43	37	31	21	97.2	93.1%
" "	Minnesota	97	81	65	48½	36½	43½	34	29½	24½	19½	72.6	69.7%
" "	Iowa	88	64	46½	41	33½	37½	29½	25½	22	20	60.4	57.8%
360 Miles	North Dakota	144½	123½	96	73	57½	57½	50½	44½	35	29½	109.2	100%
" "	South Dakota E.Mo.Rvr	116	97	78	58½	47½	47½	40	34½	29½	24	87.3	79.9%
" "	Nebraska	129½	110	90½	78	58½	64½	45½	38½	32½	22	102.0	93.4%
" "	Iowa	89½	65½	50	43	35	38½	31	27½	23½	21	62.0	56.7%
" "	Minnesota	100½	83½	67	50	40	45	35	30½	25	20½	75.2	68.8%
380 Miles	North Dakota	151	128	99	76	61	61	53½	45½	36½	30½	113.5	100%
" "	South Dakota E.Mo.Rvr	120	101½	81	60½	48½	48½	42	36½	31	24	90.7	79.9%
" "	Nebraska	135½	115	95	81½	61	67½	47½	40½	34	23	106.7	94.0%
" "	Iowa	91½	67	52	48½	36½	40	33	29	25	23	63.6	56.0%
" "	Minnesota	103½	85½	69	52	41½	46½	36	31	26	20½	77.5	68.2%
400 Miles	North Dakota	156½	133½	105½	81	62½	62½	55	47½	36½	32½	119.1	100%
" "	South Dakota E.Mo.Rvr	124½	104	83½	62	50	50	44½	38	32½	25½	93.5	78.5%
" "	Nebraska	142	120	99	85	64	70½	50	43	35	24½	111.5	93.6%
" "	Iowa	92½	68½	53	45½	38	42	34	30½	26½	24½	64.8	54.4%
" "	Minnesota	106	88½	70½	52½	43	47½	37	31½	26½	21	79.3	66.5%

Tariff Authorities

GN Ry N. D. R. C. No. 78
C & N W GFD No. 9415-E, ICC No. 8899
C St P M & O Ry Co GFD No. 3970-H
E. B. Boyd ICC No. A-1626, Tariff 160-D
N. P. Ry MRC No. 879
C St P M & O GFD No. 4660-F.

Endorsed on face: "FILED JUL 2 1920. J.A.Montgomery, Clerk"

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kota, and East Grand Forks, Minnesota, since August 15th, 1923; that previous to that time he was traffic assistant in the Saint Paul Association of Public & Business Affairs, located in St. Paul, Minnesota, for approximately three years; and previous to that was in the employ of the Chicago, St. Paul, Minneapolis & Omaha Railway Company at St. Paul in the general freight department and in the office of the auditor of freight accounts; that during the last eight years of his employment there he was chief clerk to the auditor freight accounts; and during all of these years dealt with traffic and transportation matters; that he has participated in a number of cases before the Interstate Commerce [fol. 74] Commission and before the Board of Railroad Commissioners of North Dakota and the Minnesota Railroad & Warehouse Commission of Minnesota, acting as both counsel and witness; that he is familiar with the cases here involved, Nos. 2255 and 2875, and that he acted as counsel and witness for the shippers and receivers at Grand Forks. He also acted as a witness for the following cities in addition to Grand Forks: Fargo, Valley City, Jamestown, Bismarck, Manden and Minot, as stated at pages 8 and 13 of the record in Case 2255.

Facts Concerning the Present Adjustment of Freight Rates Within the State of North Dakota

The railroads of the United States filed applications with the Interstate Commerce Commission in the latter part of April, and in the early part of May, 1920, for increases in all freight rates, including class rates. The Interstate Commerce Commission rendered a decision in this case, Ex Parte 74, In the Matter of the Applications of Carriers in Official, Southern and Western Classification Territories for Authority to Increase Rates, 58 I. C. C. 220, and directed increases in the western group, which includes North Dakota, Minnesota, South Dakota, and a few other states. For instance, on class rates interstate in the western group they fixed the increase at 35% above the then prevailing rates.

The officials of the State of North Dakota, as evidenced by I. C. C. Docket 12085, reported in 61 I. C. C. 504, did not feel that the intrastate rates should be increased on account of their relatively high nature, and for the fact that no

hearings were held before the Board of Railroad Commissioners of the State of North Dakota to determine the reasonableness of the 35% increase in these state rates. There were only a few states in the Union that took the same position as did North Dakota. The carriers then filed with the Interstate Commerce Commission a petition for relief under Section 13 of the Interstate Commerce Act, and the case was submitted to the Commission April 22nd, 1921, and decided May 3rd, 1921, and the Interstate Commerce Commission ordered the same increases on North Dakota intrastate traffic as applied to interstate traffic.

On interstate traffic a downward revision was made in the freight rates in Reduced Rates, 1922, reported in 68 I. C. C. 676, in which class rates, for instance, were reduced 10%. [fol. 75] A like reduction was made in the class rates within the State of North Dakota, and today there is no class rate in effect in the State of North Dakota on the basis as ordered by the Interstate Commerce Commission in Docket 12085.

Further changes were made in the class rates interstate by the Interstate Commerce Commission in the Fargo Case, 98 I. C. C. 691, on both single and joint line traffic, and the interstate rates from Fargo into Minnesota, and from St. Paul, Minneapolis and Duluth and related points, and from Wisconsin points taking the same rates as either St. Paul, Minneapolis or Duluth, were changed as a result of that case to all points in Minnesota located 150 miles and less from Fargo, North Dakota. Before the decision in the Fargo Case, which was made by the Interstate Commerce Commission on June 2nd, 1925, the prevailing rates from Fargo to points in Minnesota requiring the movement of freight over two or three lines was a combination of local rates of each railroad. The Commission condemned that method, and ordered in rates for joint line hauls on the basis of the single line distance plus the following arbitraries in cents per 100 pounds:

Classes	1	2	3	4	5	A	B	C	D	E
Arbitraries	8	7	6	5	3	3	3	2	2	1

These arbitraries are the same that the Board of Railroad Commissioners in Case 2875 ordered into effect for state application on joint line traffic.

As a result of the Fargo Case changes in class rates were made to various North Dakota cities, including Grand Forks, Fargo, Valley City and Jamestown. Therefore, interstate rates to a large territory in Minnesota and North Dakota do not bear any relation to the rates as prescribed by the Interstate Commerce Commission in Ex Parte 74, 58 I. C. C. 200, or in Reduced Rates, 1922, 68 I. C. C. 676.

In Mason City Brick & Tile Company v. Director General, as Agent, Atchison, Topeka & Santa Fe Railway Company, et al., 107 I. C. C. 702, the Interstate Commerce Commission ordered a readjustment in rates from Mason City, Iowa, to points in Iowa Interstate, Nebraska, South Dakota [fol. 76] and Minnesota. This case was submitted December 13th, 1924, and decided on March 1st, 1926.

Changes in the brick rates were ordered by the Interstate Commerce Commission on February 17th, 1928, from Springfield and Heron Lake, Minnesota, to destinations in North Dakota in A. C. Ochs Brick & Tile Company et al. v. Chicago & North Western Railway Company et al., 139 I. C. C. 695. The rates published as a result of this order considerably reduced the rates to points in North Dakota.

The carriers voluntarily made adjustments in the rates from a large number of Iowa and Minnesota brick manufacturing plants, considerably reducing the rates to points in North Dakota east of the Missouri River, except from Mason City, Iowa, which point already enjoyed the lower basis of rates, Soo Line I. C. C. 6330, effective February 25th, 1929.

Adjustments have been made in the rates on various commodities, several of which were made voluntarily by the carriers, and others by order of the Board of Railroad Commissioners, since the decision of the Interstate Commerce Commission in North Dakota Rates, Fares and Charges, Docket 12085, 61 I. C. C. 504. In one of the cases here under attack, Case 2255, the rates on brick from Grand Forks and other manufacturing points in the state were ordered reduced by the Board of Railroad Commissioners, and the plaintiffs published said rates effective November 14th, 1927, in Great Northern Railway freight tariff N. D. R. C. No. 93.

The grain rates were brought under attack by the State Mill & Elevator Association and others, and the Board of Railroad Commissioners of this state ordered the rates

reduced intrastate for both single and joint line movement under Case No. 2375. The carriers contested this case through the District Court of Burleigh County, and that Court ordered the carriers to put the reduced rates into effect, which they did under date of January 20th, 1927. The carriers appealed from the decision of the District Court to the Supreme Court of the State of North Dakota, and the Supreme Court upheld the findings of the lower court, 219 N. W. 295.

The rates on reinforced concrete pipe within the State of North Dakota were ordered adjusted by the North Dakota Board of Railroad Commissioners in Case 2815, and the [fol. 77] carriers complied with that order by putting the new rates in effect March 1st, 1928, in Supplement 13 to Great Northern N. D. R. C. No. 93.

To get before the Court the picture of the general level of class rates, graphs of the first and fourth class rates are attached hereto, and marked Exhibits A and B. Exhibit A is a graph showing the level of the present North Dakota first class rates. It also shows the scale ordered into effect by the Board of Railroad Commissioners for single line application, which is shown by the line marked "90% Scale." For the information of the Court the South Dakota first class rates are shown and marked "South Dakota East of Missouri River Scale." The first class "Minnesota Scale" is also shown on this graph, and it will be noticed that all of the rates based upon the findings of the Board of Railroad Commissioners in Case 2255 beyond 50 miles are higher than the scales of Minnesota or South Dakota. This graph also shows that the North Dakota scale starts at 18½ cents; that the 90% scale ordered into effect by the Board starts at 16½ cents; that the South Dakota scale starts at 16 cent; and that the Minnesota scale starts at 18½ cents. There is, however, a minimum rate rule applying on both state and interstate traffic to the effect that no rate shall be applied on any traffic moving under class rates lower than the amount in cents per 100 pounds for the respective classes as shown below:

Classes	1	2	3	4	5	A	B	C	D	E
Cents	25	21	17½	15	11	12½	9	7½	6½	5

Therefore, shipments moving in either intrastate or interstate traffic would not enjoy anything lower on first class

traffic than 25 cents per 100 pounds. The 90% scale as ordered into effect by the Board of Railroad Commissioners on first class, as shown by the graph, is 25 cents at 22 miles. In Minnesota the 25 cents is reached at 25 miles. This graph also shows the high nature of even the 90% scale.

Exhibit B is a graph of the fourth class rates, and there is shown the same scales on that graph as on Exhibit A. It will be noted that the present North Dakota scale starts at 9 cents, the 90% scale ordered into effect by the Board at 8 cents, the South Dakota scale at 8½ cents, and the Minnesota scale at 9 cents. The minimum rate, however, on fourth class is 15 cents per 100 pounds. Therefore, no [fol. 78] fourth class rate could be applied lower than 15 cents.

A graph of the first class rate under the present North Dakota scale for 250 to 600 miles with the average first class rate between Minneapolis and North Dakota points for equal distances on the Great Northern, the Northern Pacific, and the Soo Line Railways is hereto attached as Exhibit C. The solid line marked No. 1 is the present North Dakota scale. The broken line marked No. 2 is the Great Northern Railway's Minneapolis rate. No. 3, broken line, is the Soo Line's Minneapolis rate, and the solid line, No. 4, is the Northern Pacific Railway's Minneapolis rate. It will be noticed that the North Dakota intrastate scale is considerably higher than are the scales that Minneapolis jobbers and manufacturers pay for the same amount of transportation within the State of North Dakota, further indicating that the discrimination against North Dakota jobbing towns is exceedingly pronounced.

Exhibit D attached hereto is a statement showing the rates published from Minneapolis, St. Paul and Duluth to various points in North Dakota contrasted with the regular distance rate from and to the points shown, and the present and proposed rates between North Dakota jobbing points and other points in North Dakota equidistant from the North Dakota jobbing points as Minneapolis, St. Paul and Duluth are from the North Dakota points shown. It is noted that Minneapolis, St. Paul and Duluth do not pay the regular interstate scale, but enjoy a scale approximately 10% lower than the interstate scale, and that if the jobbing towns in North Dakota are given like treatment that their

rates would be approximately on the same level mile for mile as Minnesota jobbing towns are given to points in North Dakota.

To make this absolutely clear, the rate from Minneapolis to Cooperstown for 346 miles is $1.28, whereas, if Minneapolis paid the regular interstate scale it would be $1.42. On the lower part of Exhibit D opposite the figure 1 is shown the present and proposed rates applying between Fargo and Medora, a distance of 349 miles, where Fargo is compelled to pay $1.42, the regular distance scale, which is the same as the regular interstate scale applying from Minnesota points to North Dakota points. In the decision [fol. 79] of the Board of Railroad Commissioners, the Fargo-Medora rate is ordered reduced to $1.28, which equals the adjustment that Minneapolis enjoys to Cooperstown for approximately the same mileage.

Exhibit E is a statement showing the relative level of interstate rates in North Dakota, Minnesota and South Dakota, and between Montana, Minnesota, North and South Dakota; also the Montana state rates and the Montana distributing or jobbing rates. The distance as shown on the exhibit from Minneapolis to Aberdeen is 285 miles. The Minneapolis first class rate is $1.15½. The South Dakota east of the Missouri River distance scale for 285 miles is $1.04, whereas, in North Dakota for the same distance, the first class rate is $1.21½. The intrastate class rates in South Dakota, it is noted, are lower than the interstate rates from Minneapolis, whereas, in North Dakota the contrary is the case. At the bottom half of Sheet 1 and Sheet 2 of Exhibit E is shown the class scale applying between Montana and Minnesota, North and South Dakota opposite the figure 1; opposite the figure 2 the Montana state rates are shown, which are applicable on both state and interstate traffic, and opposite the figure 3 are shown the Montana distributing or jobbing rates. It will be noted that the jobbing rates of Montana are lower than the rates are for miscellaneous movement between towns and cities not termed jobbing centers.

Exhibit F is a statement showing the present rate adjustment applying between Grand Forks, North Dakota and points in North Dakota on the Soo Line. The present rates are shown opposite the letter A, and the rates as the

result of the Board of Railroad Commissioners' decision in Case 2875 are shown opposite the letter B. The adjustment, it will be noted, includes increases as well as reductions. To Lankin, for instance, the first station shown on Exhibit F, the first five class rates are reduced. At Loma reductions prevail with the exception of the second class rate, which carries an increase. Brumbaugh, the third station on the exhibit, carries increases on the second, fourth and fifth class rates. At Pasha the first class rate is lowered one cent, no change in the second class, the third class rate is increased one cent, the fourth class rate is increased 1½ cents, and the fifth class rate is increased ½ cent. At [fol. 80] Rolette the first class rate is increased 1 cent, second class 2 cents, third class 1 cent, fourth class 2½ cents, fifth class is reduced ½ cent.

The general adjustment of the class rate structure by the Board of Railroad Commissioners in Case 2255 and 2875, in my opinion, equalizes the North Dakota jobbing cities with jobbing and manufacturing cities without the state, principally our greatest competitors, Minneapolis, St. Paul and Duluth.

It is true that the general class rate structure of the country is under investigation by the Interstate Commerce Commission under Docket 17000 Part 2. This was known at the hearing in these cases, as is shown by the examination of pages 280 to 282 of the record. This, of course, does not mean that the Interstate Commerce Commission is to prescribe rates for the State of North Dakota, as even after their decision in the case, which may be made this fall or two years hence, the Board of Railroad Commissioners of this state will set down for hearing a case to determine what rates will be reasonable, just and non-discriminatory, which does not mean that the North Dakota Board will have to find that the exact level of rates prescribed by the Interstate Commerce Commission on interstate traffic will have to be applied to intrastate traffic.

Likewise the rates on grain were under investigation by the Interstate Commerce Commission in Docket 17000 Part 7 when the State Mill & Elevator case was heard, Case No. 2375, and as previously stated, this case was decided, went through the courts, and the shippers of grain and grain

products are now enjoying the benefit of those state commission made rates, and have been since January 20th, 1927. The oral argument in the Federal grain case has just been concluded in Washington after over two years of litigation, and it is impossible to say when we will receive a decision from the Federal body, and the Federal grain case is considerably ahead of the Federal class rate case, as in the latter case the Examiners have not as yet gotten out the tentative report, which must be done, after which all parties will be given a chance to speak on brief, and the case will then be orally argued, and not until then will it be considered submitted, and from past experience in cases as voluminous as this one there is no telling when the Federal body will render its decision.

[fol. 81] The fact that plaintiffs are willing to put up a bond which purports to protect the North Dakota interests does not and cannot protect them. For instance, the jobbing cities in the State of North Dakota are in competition with the jobbing cities in Minnesota, particularly Duluth, Minneapolis and St. Paul, and this record fully shows the discrimination that exists in the rates applying from those distributing centers in Minnesota versus the jobbing cities of North Dakota to destinations in the state. Exhibit No. 9, page 2, presented in this case, shows that the terminal rates from Duluth, Minneapolis and St. Paul to Points in North Dakota are based upon approximately 90% of the regular going interstate scale between Minnesota and North Dakota, as shown by Exhibit C attached hereto. Therefore, it must be apparent to this Court that the jobbing cities of Duluth, Minneapolis and St. Paul can pass right through the jobbing cities in North Dakota with less than carload freight, and do business that rightfully belongs to the jobbing cities of North Dakota who are tax payers to the state, and neither a bond or anything else but the rates themselves, found just, reasonable and non-discriminatory by the Board of Railroad Commissioners of this state, can possibly relieve this situation.

T. A. Durrant.

Subscribed and sworn to before me this 22d day of July, 1929. Jennette M. Dailey, Notary Public. My commission expires March 6, 1934. (Seal.)

Hotel Lowry, St. Paul, Ramsey County, Minnesota.

COMMERCIA
GRAND

FOLD OUT IS TOO LARGE TO BE FILMED

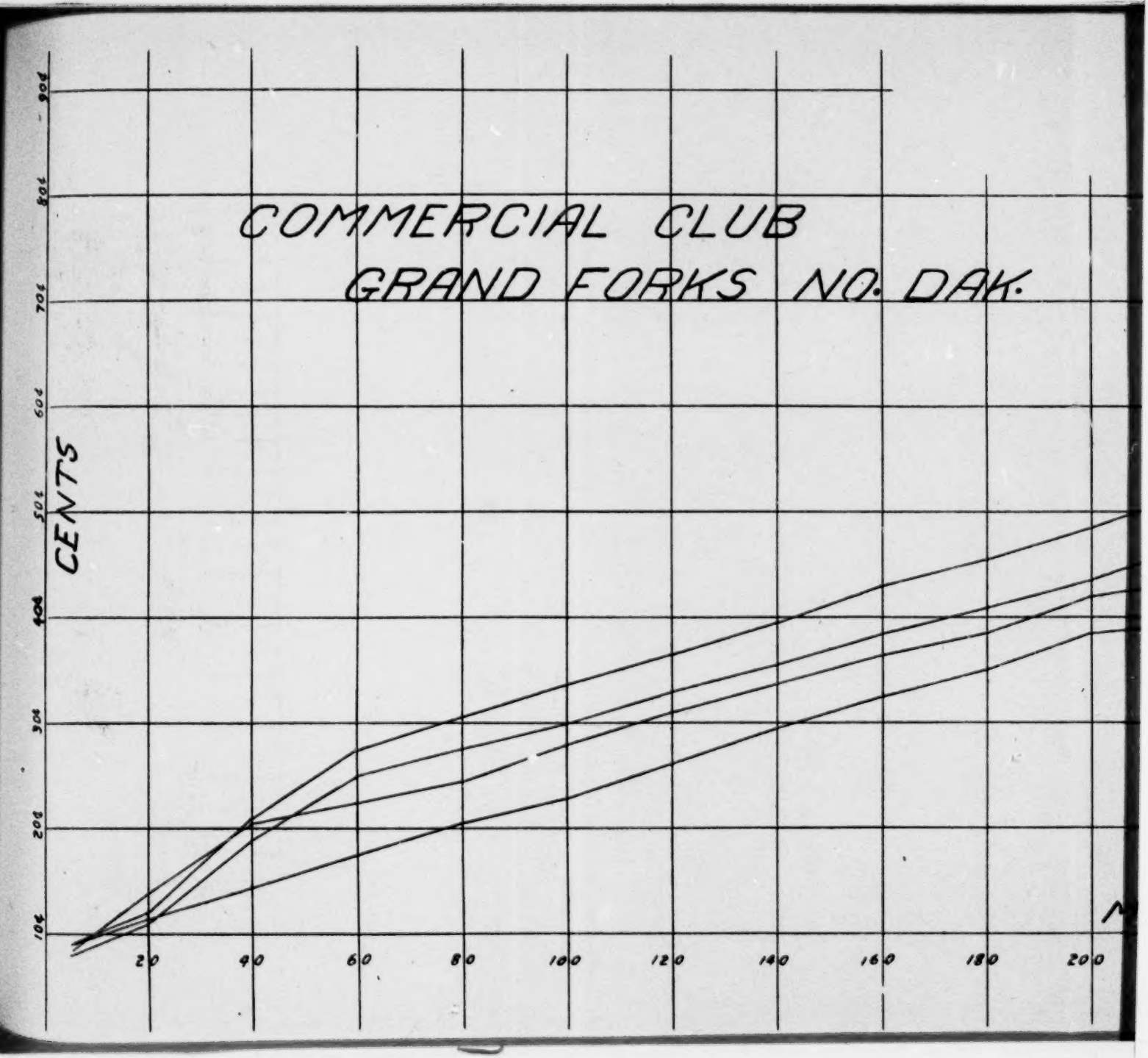
COMMERCIAL CLUB
GRAND FORKS NO. DAK.
CENTS
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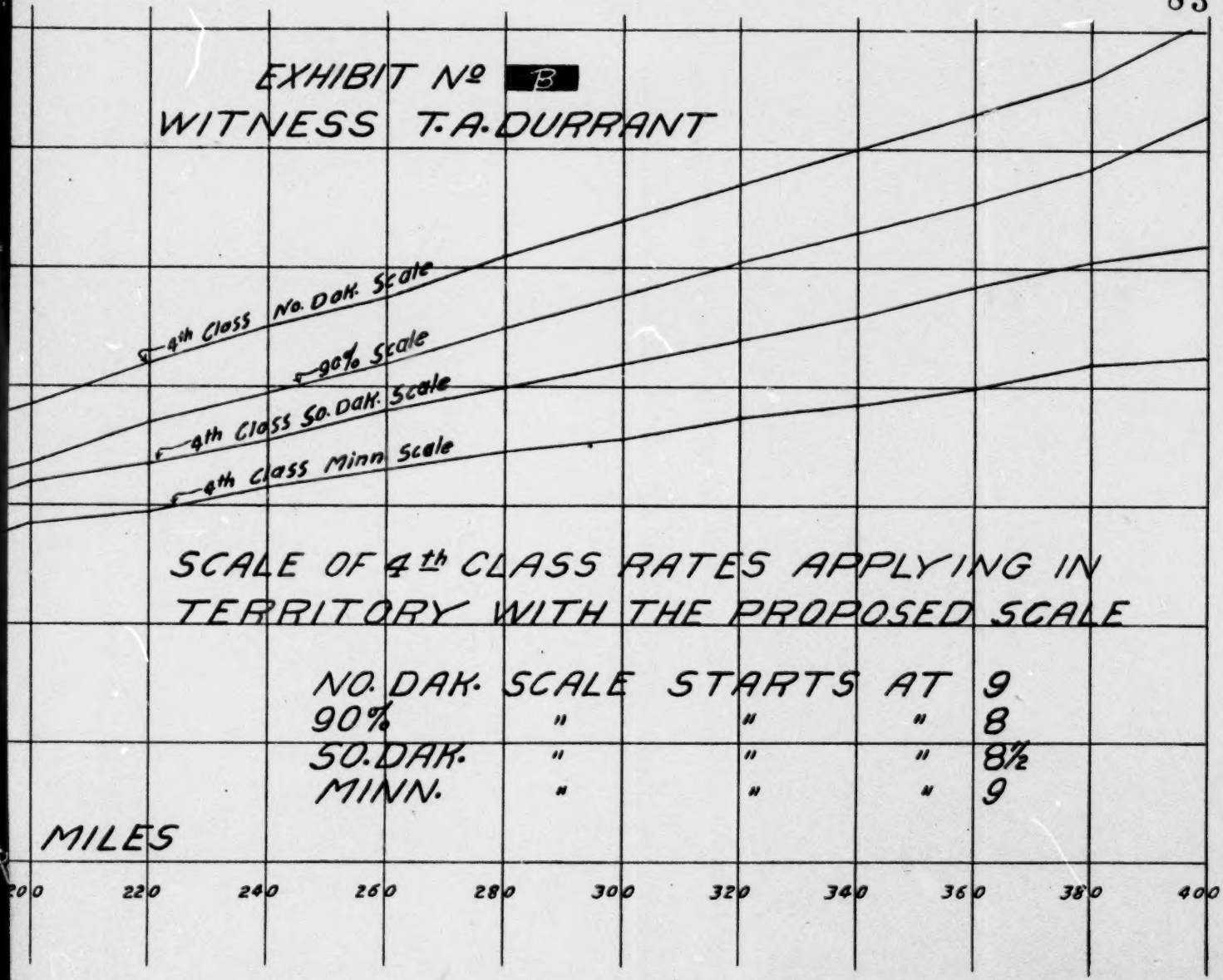
EXHIBIT Nº B
WITNESS T. A. DURRANT

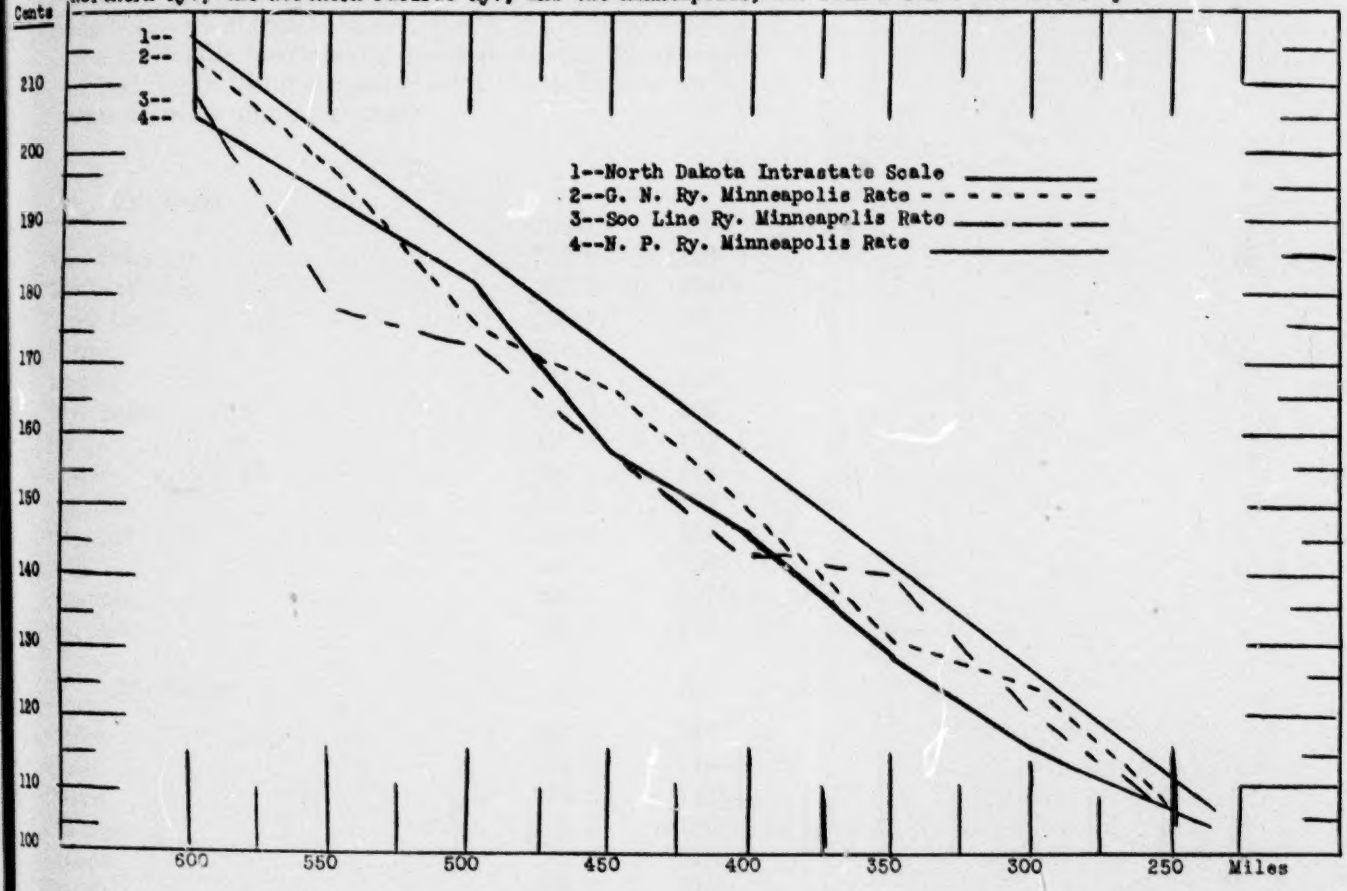


SCALE OF 4th CLASS RATES APPLYING IN TERRITORY WITH THE PROPOSED SCALE

NO. DAK.	SCALE	STARTS	AT	9
90%	"	"	"	8
SO. DAK.	"	"	"	8½
MINN.	"	"	"	9

EXHIBIT "C" - DURRANT

Graph of First Class Freight Rate under North Dakota intrastate scale for 250 to 600 miles contrasted with average First Class Rate between Minneapolis and North Dakota points for equal distances, on the Great Northern Ry., the Northern Pacific Ry., and the Minneapolis, St. Paul & Sault Ste. Marie Ry.



(Here follow Exhibit "A," "B," and "C," side folios 82, 83, and 84)

[fol. 85] Showing First Class Freight Rate between Minneapolis, Min., and points in North Dakota on the N. P. Ry., G. N. Ry., and Soo Line Ry., with distances, stations falling with- #250, #300, #350, #400, #450, #500, #550 and #600 mile blocks being taken as typical, the average of each block being compared with North Dakota intrastate scale for similar distance

N. P. Ry.

250 Miles:

	Miles	1st
Van Pelts	242.6	108
Keystone Jct.	243.5	108
Great Bend	244.4	108
Berndt	247.7	108
Barney	244.2	108
Wyndmere	250.4	108
Fargo	241	103
Cotter	245	108
Osgood	247.2	108
Haggart	246.2	108
Fife	248.2	108
Average	245.5	107½
No. Dak.	245.5	111

300 Miles:

Crete	291.3	111
Janet	295.2	114½
Oakes	299.2	117½
Gorman	295.3	116
Lisbon	297.3	116
Nome	293.5	116
Eastedge	297.7	116
Valley City	298.8	116
Average	296.0	115½
No. Dak.	296.0	126½

350 Miles:

	Miles	1st
Forest River	341.7	121
Voss	347.5	125
Kellogg	350.3	125
Medberry	345.2	124½
Edgeley	350.5	126½
Shepard	341.8	128
Windsor	349.3	135½
Cooperstown	345.7	128
Lovell	350.8	130½
Ypsilanti	346	130½
Montpelier	349.7	130½
Adrian	342.4	130½
Buchanan	346.4	133½
Average	346.5	128½
No. Dak.	346.5	142

400 Miles:

Lake Williams	390.9	151
McArthur	392.9	133
Robinson	399	151
Heaton	396.7	147½
New Rockford	392.6	144½
Divide	398.9	149
Steele	391.2	146
Geneva	399.2	146
Average	395.7	146
No. Dak.	395.7	156½

450 Miles:

Mandan	440.6	154
Wilton	447.1	164½
Pickardvile	446.4	170
Leeds	441.5	155
Hazelton	442.2	149
Sunny	443.5	156½
Lyons	448.8	158
Average	447.3	158
No. Dak.	447.3	172

500 Miles:

	Miles	1st
Breien	495	193
Timmer	498.7	193
Stanton	494.1	170
Kurtz	493.2	176½
Glen Ullin	498	178
Average	495.8	182
No. Dak.	495.8	187

550 Miles:

Elgin	543.8	193
New Leipzig	549.2	193
Halliday	542.6	193
Werner	548.3	196
Lehigh	545.3	191½
Dickinson	549.8	193
Average	546.5	193½
No. Dak.	546.5	202½

600 Miles:

Rider	595.3	206½
Average	595.3	206½
No. Dak.	595.3	215½

G. N. Ry.

250 Miles:

Belle Plaine	247.7	106
Havana	250.1	106
Addison	248	112
Howes	249.3	112
Argusville	247.7	108
Average	248.5	109
No. Dak.	248.5	111

300 Miles:

Hatton	299.9	125
Karnak	298.8	126½
Thompson	298.5	121
Average	299.1	124
No. Dak.	299.1	126½

350 Miles:

Dundas	350.7	142½
Grafton	346.4	125
Conway	345.8	125
Michigan	346.8	129
Average	347.8	130½
No. Dak.	347.4	142

[fol. 86] 400 Miles:

Walhalla	394.7	144½
Selz	393.9	155
Langdon	396.8	146
Hampden	397.1	146
Churches Ferry	393.6	151
Average	395.5	148½
No. Dak.	395.5	156½

450 Miles:

Simcoe	444.1	170
Genoa	450.5	172
Rolla	441	164½
St. John	448.4	167
Thorne	445.5	164½
Barton	444.6	164½
Berwick	443.3	164½
Towner	450.7	167
Average	446	167
No. Dak.	446	172

500 Miles:

Landa	493.5	175
Westhope	499.3	175
Dunning	491.3	175
Maxbass	496.2	175
Glenburn	496	175
Minot	492.4	175
Gassman	498	175
Hartland	494.8	175
Roach	492.3	181
Tagus	497.6	181
Average	495.2	176
No. Dak.	495.2	185½

550 Miles:

	Miles	1st
Tioga	546.9	199½
Powers Lake	545.8	199½
Lignite	542.9	193
Stampede	550.9	196
Northgate	543.3	202½
Average	545.9	198
No. Dak.	545.9	202½

600 Miles:

Trenton	597.8	214½
Todd	593.6	214½
Zahl	595.6	217½
Grenora	597.6	220½
Average	596.2	217
No. Dak.	596.2	217½

Soo Line Ry.

250 Miles:

Venlo	249	108
Average	249	108
No. Dak	249	111

300 Miles:

Faust	296	121
Kilbernie	295	121½
Boynton	292	121½
Valley City	291	116
Average	294	120
No. Dak.	294	124½

350 Miles:

Millers Spur	344	140
Bordulac	348	140
Wichek	345	140
Average	345.6	140
No. Dak.	345.6	142

400 Miles:

	Miles	1st
Fordville	394	133
Harvey	400	156½
Dewar	398	133
Moffit	396	149
Average	396	143
No. Dak.	396	156½

450 Miles:

Bergen	441	169
Voltaire	447	170
Essex	441	142½
Balta	447	164
Devils Lake	446	146
Alsen	448	151
Baldwin	442	158
Kongsberg	447	170
Average	448	159
No. Dak.	448	172

500 Miles:

Carpio	499	175
Umbria	494	164½
Ryder	492	176½
Makoti	499	181
Average	496	174½
No. Dak.	496	187

550 Miles:

Flaxton	544	187
Kramer	541	175
Russell	550	175
Greene	546	175
Average	545	178
No. Dak.	545	202½

600 Miles:

Ambrose	595	208½
Average	595	208½
No. Dak.	595	215½

[fol. 87] EX. D—DURRANT

Case No. 2255 and 2875

Statement showing the rates published from Minneapolis, St. Paul and Duluth to various points in North Dakota, which published rates are shown under the column "Present"; what those rates would be if those cities paid the regular distance scale, which is shown under the heading "Interstate Scale"; also what the rates from Fargo, Grand Forks, and Wahpeton are to points in North Dakota equidistant from the latter-named cities as the North Dakota points are from Minneapolis, St. Paul, and Duluth. Under the heading "Proposed" are the rates based upon the decision of the Board of Railroad Commissioners in Case No. 2255.

	Between	And	Miles	Present	Interstate scale
1.	Minneapolis	Cooperstown, N. D.	346	1.28	1.42
2.	St. Paul	Lakota, N. D.	368	1.33	1.47½
3.	St. Paul	Larimore, N. D.	331	1.25	1.37
4.	Duluth	Michigan, N. D.	348	1.29	1.42
5.	St. Paul	Shawnee, N. D.	338	1.25	1.38½

	Between	And	Miles	Present	Proposed
1.	Fargo, N. D.	Medora, N. D.	349	1.42	1.28
2.	Fargo, N. D.	Chama, N. D.	369	1.47½	1.33
3.	Fargo, N. D.	Fryburg, N. D.	335	1.37	1.23½
4.	Grand Forks, N. D.	Grenora, N. D.	349	1.42	1.28
5.	Wahpeton, N. D.	Sherwood, N. D.	338	1.38½	1.25

Tariff Authority: G. N. I. C. C. A-6559, A-6525, N. D. R. C. No. 93. N. P. I. C. C. 8504 and 8463.

Case Nos. 2255 and 2875

Statement Taken from Pages 13, 14, and 15 of Exhibit No. 8 in This Case, Showing the Relative Level of Interstate Rates in North Dakota, Minnesota, South Dakota, and Between Montana, Minnesota, North and South Dakota; also the Montana State Rates and the Montana Distributing Rates

Between Aberdeen and	Miles	1st	2nd	3rd	4th	5th	A	B	C	D	E	Per cent So. Dak. interstate
Minneapolis	285.4	115½	97	76	57½	45½	45½	39½	35	27½	23	100%
South Dakota-East Distance Scale	285	104	87½	70	52	42	42	36½	32½	26½	21	91%
Minnesota Dist'r Distance Scale	285	115½	99	76	57½	45½	45½	41½	35	27½	23	101%
North Dakota Intrastate Distance Scale	285	121½	103½	81	61	48½	48½	43	36½	29½	24	106%

(1) Between Montana and Minnesota, North and South Dakota.
(2) Montana state rates, applicable also in intrastate traffic.
(3) Montana distributing rates.

Miles		1st	2nd	3rd	4th	5th	A	B	C	D	E	Average
5	(1)	22½	19	16	13½	10	11½	8	7	6	4½	11.80
	(2)	16	13	11½	10½	8½	8½	6	4½	4½	2½	8.55
	(3)	14	13	10½	8½	7	7	6	4½	4½	2½	7.75
25	(1)	36	30	25½	21	18	18	15	11	9	7½	19.00
	(2)	34	28½	24½	20	17	17	14	10½	8½	7	18.10
	(3)	31	27	21½	18½	16	16	13	10½	8½	6	16.80
50	(1)	52½	45	38	32	27	27	21	16½	14	11	28.40
	(2)	49½	42½	35½	29½	25	25	20	16	13	10½	26.65
	(3)	45	38½	31	27	22½	22½	18½	14	11½	8½	23.90

75	(1)	68	56	47	39	33	33	27	20	16½	14	35.15
[fol. 89]	(2)	62	52	44	36½	31	31	25	18½	16	13	32.90
	(3)	56½	47½	39½	34	28½	28½	22½	17	14	11½	29.95
100	(1)	83	70½	59	50	42	42	33	25½	21	16½	44.25
	(2)	78	66½	55½	47	39½	39½	31	24½	20	16	41.75
	(3)	70	61	49½	42½	35½	35½	28½	21½	18½	14	37.65
150	(1)	102	87	72	61½	51	51	41	30	25½	21	54.20
	(2)	96	81½	67½	58	47½	47½	38½	28½	24½	20	50.95
	(3)	87½	74½	61	52	44	44	35½	27	22½	17	46.50
200	(1)	119	101	83	70½	60	60	48	36	30	24	63.15
	(2)	111½	94½	78	66½	56½	56½	45	34	28½	22½	59.35
	(3)	101½	86	70	61	51	51	41	31	25	20	53.75
250	(1)	135	115½	95	81	68	68	54	41	34½	27	71.90
	(2)	126½	108½	89	76	63½	63½	51	38½	33	25	67.45
	(3)	115	98½	80½	69½	58	58	47	35½	29½	22½	61.40
300	(1)	150	128	105	90	75	75	60	45	38	30	79.60
	(2)	141	119½	98½	84½	70	70	56½	42½	35½	28½	74.65
	(3)	128½	108½	90	78	65	65	51	38½	33	25	68.25
350	(1)	167	141	117	101	84	84	66	50	42	33	88.50
	(2)	156½	132½	110	94½	79	79	62	47	39½	31	83.10
	(3)	142	121	100½	86	72	72	56½	42½	35½	28½	75.65

[fol. 90] EX. F—DURRANT

Case No-. 2255 and 2875

Statement showing the present rate adjustment for the first five classes applying between Grand Forks, N. Dak., and points in North Dakota located on the Soo Line. Opposite the letter "A" will be found the present rates; opposite the letter "B" will be found the rates prescribed by the Board of Railroad Commissioners in Case No. 2875

Between	And		Classes 1	2	3	4	5
Grand Forks	Lankin	A	64½	56	44	35	25
		B	58	50	39	30	22
"	Loma	A	69	57½	45½	35	27½
		B	67	58	45	35	27
"	Brumbaugh	A	78	65½	52	39½	30½
		B	77	66	52	40	31
"	Pasha	A	79	67	52	39½	32½
		B	78	67	53	41	31
"	Armourdale	A	79	67	52	39½	32½
		B	79	68	53	41	33
"	Arndt	A	78	65½	52	39½	30½
		B	75	63	50	40	31
"	Rolette	A	82	70	55	41½	33½
		B	83	72	56	44	33
"	Tasco	A	88	74½	57½	44½	35
		B	88	76	60	46	36
"	Egeland	A	74½	64	48½	38½	30½
		B	74	63	50	38	30
"	Mylo	A	82	70	55	41½	33½
		B	81	69	54	42	32
"	Overly	A	88	74½	57½	44½	35
		B	87	74	58	45	35
"	Gardina	A	96	82	64	48½	38½
		B	90	77	61	46	36

(Rates shown opposite the letter "'A" are taken from Exhibit No. 31.)

[File endorsement omitted.]

[fol. 91] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF G. M. SPRINGER—Filed July 2, 1929

G. M. Springer, being first duly sworn, deposes and says: That he is and has been Traffic Manager for the Commercial interests of Jamestown, North Dakota, since January 1st, 1918.

That prior thereto he was engaged in railroad traffic work for a period of twenty-five or more years including a position of traffic manager of the Midland Continental Railroad of the South Dakota Central Railway and as freight rate clerk for a number of other companies. That he has appeared in a number of cases before the Interstate Commerce Commission, the Board of Railroad Commissioners of North Dakota and other regulatory bodies.

That the order of the North Dakota Board of Railroad Commissioners in the case now before this court was intended to remove prejudice against Jamestown, North Dakota, in connection with freight shipments between that point and other points within the State of North Dakota, especially points located on the Minneapolis, St. Paul & Sault Ste. Marie Railway.

That this prejudice in favor of other cities of North Dakota including Fargo, has been of long standing as evi- [fol. 92] denced by the decision of the North Dakota Commission and the following efforts which have been made by shippers of Jamestown to remove a prejudicial situation.

On August 7th, 1920, a committee of six business men of Jamestown made a trip to St. Paul and interviewed traffic officials of the Northern Pacific Railway requesting an adjustment, which was not granted for reasons which need not be enumerated. However, this conference was followed by others and finally the matter was submitted to the Interstate Commerce Commission as an informal complaint on January 14, 1922. Failing of securing relief in that manner, a formal complaint was lodged with the same commission under date of August 4th, 1922. At that time the North Dakota Commission had lost its jurisdiction but which was restored to it and following which the aforementioned complaint was withdrawn and the matter submitted to the Board of Railroad Commissioners of North Dakota in an informal complaint. Nothing being accomplished through these efforts a formal complaint was lodged with this Board and assigned their case No. 2381 dated December 30, 1925 and this latter case was heard jointly with Case No. 2255, the decision in which is now before this Court.

Under the present freight rate adjustment Jamestown, North Dakota, is wholly unable to do a jobbing or distributing or assembling business within the State of North Da-

kota at points located on the lines of the Minneapolis, St. Paul & Sault Ste. Marie Railway, the Great Northern Railway, or the Chicago, Milwaukee, St. Paul & Pacific Ry. which most seriously retards the free natural and normal commercial development of that city which is located in central North Dakota. The decision and order of the North Dakota Commission now before this Court would remedy this intolerable situation and which has extended over a long period of years and would give to Jamestown, North Dakota, the same basic class freight rates as the plaintiff railroads have voluntarily extended to Fargo, North Dakota, and other points for a period extending over the past twenty years at least.

G. M. Springer.

Subscribed and sworn to before me this 2nd day of July, 1929. Jennette M. Dailey, Notary Public, Ramsey County, Minnesota. [Seal.]

[fol. 93] [File endorsement omitted.]

[fol. 94] In United States District Court

Affidavit of James G. Morrison—Filed July 3, 1929

State of Minnesota,
County of Ramsey, ss:

James G. Morrison, being first duly sworn, on oath deposes and says:

That he is the General Freight Agent of the Northern Pacific Railway Company, one of the plaintiffs in the above entitled proceedings; that as such General Freight Agent he has charge and supervision of the establishment and publication of intrastate and interstate freight rates on said railroad; that he has been engaged in railroad traffic work for more than thirty-five years and has made a study of and is familiar with the class rate adjustment intrastate in North Dakota and interstate to, from and through the state of North Dakota on the lines of plaintiffs herein.

That he has read the affidavit of G. M. Springer filed herein and that said affidavit refers to inequalities in the

intrastate class rate adjustment in North Dakota and not to the relationship that would exist between the interstate class rates and the North Dakota intrastate class rates if the order of the Board of Railroad Commissioners of North Dakota of May 8, 1929, becomes effective.

The statement in the last paragraph of said affidavit of G. M. Springer to the effect that "The decision and order of the North Dakota Commission now before this Court would remedy this intolerable situation and which has extended over a long period of years, and would give to Jamestown, North Dakota, the same basic class freight rates as the plaintiff railroads have voluntarily extended to Fargo, North Dakota, and other points for a period extending over the past 20 years at least" is incorrect if it is intended thereby to say that the order of the North Dakota Commission of May 8, 1929, would establish a level of intrastate class rates the same as the plaintiffs have voluntarily extended to Fargo and other points. The intrastate single and joint line class rates now in effect in North Dakota on plaintiffs' lines are the same, distance considered, between all points in the state of North Dakota, except as to certain joint line rates hereinafter referred to. From Fargo via [fol. 95] the Northern Pacific and C. M. St. P. & P. Railway and from Grand Forks via the Northern Pacific and Great Northern Railways to certain points on the Soo Line in North Dakota, joint line class rates are in effect which are somewhat lower than the joint line rates from Jamestown for the same distances to Soo Line Points.

The order of the North Dakota commission of May 8, 1929, would establish different and lower rates than the existing rates from Jamestown to stations on the Soo Line and would require rates to be established from Fargo and Grand Forks which are generally lower than the rates now in force from these jobbing points to stations on the Soo Line. The single line class rates now in effect from Jamestown, N. D., via the Northern Pacific Railway, intrastate to all points in North Dakota, are the same as those applying single line between all other North Dakota points on the Northern Pacific Railway on intrastate traffic for the same distances. In other words, so far as single line class rates intrastate in North Dakota are concerned Jamestown, North Dakota, enjoys the same rates as any other station in that

state. The only exception to the uniform basis of class rates intrastate in North Dakota existing today is the joint line basis of rates from Fargo and Grand Forks to certain Soo Line stations as heretofore referred to.

As to single line class rates the order of the North Dakota Board does not perpetuate any basis of class rates voluntarily established by plaintiffs, for the reason that said order in every instance will reduce the existing intrastate class rates in North Dakota 10% when applied to, from or between any station in North Dakota designated as a jobbing point. Nor would said order perpetuate any joint line class rates intrastate in North Dakota which plaintiffs have voluntarily established between points in North Dakota because it prescribes joint line rates on an entirely different and generally on a lower basis than any joint line rates which are now in effect on intrastate traffic in North Dakota.

Regarding Affidavit of T. A. Durrant

The blue print marked "Exhibit A" attached to T. A. Durrant's affidavit contains four lines showing different scales of first class rates. The top line is the scale of first class rates uniformly applied for single line movements intrastate in North Dakota. The line marked "90% of Scale" show what the North Dakota intrastate first class single line rate would be under the North Dakota Commission's order of May 8, 1929. The line marked "South Da- [fol. 96] kota East of Missouri River Scale" applies only intrastate between points in South Dakota east of the Missouri River. The line marked "Minnesota Scale" is a scale which applies only between points in Minnesota with the exception that it applies in some instances between Minnesota points and Superior, Wis., because of the long-and-short-haul clause of Section 4 of the Interstate Commerce Act, Superior being intermediate to Duluth. This scale, marked on the blue print "First class Minnesota Scale" in no instance applies interstate between Minnesota and North Dakota. Furthermore, said first class scale shown on said blue print, as well as the rates for all other classes under the Minnesota scale, apply only between certain Minnesota points for the reason that said scale was condemned by the Interstate Commerce Commission in the Fargo case,

98 I. C. C. 691, as being unreasonably low and unjustly discriminatory against interstate commerce, and the Interstate Commerce Commission in that proceeding prescribed a higher basis of rates for intrastate application in Minnesota between the particular points which were in issue in the proceedings before the Interstate Commerce Commission.

The blue print Exhibit B attached to T. A. Durrant's affidavit is identical with Exhibit A except that it shows the fourth class rates. What has been said above with respect to Exhibit A applies equally to Exhibit B.

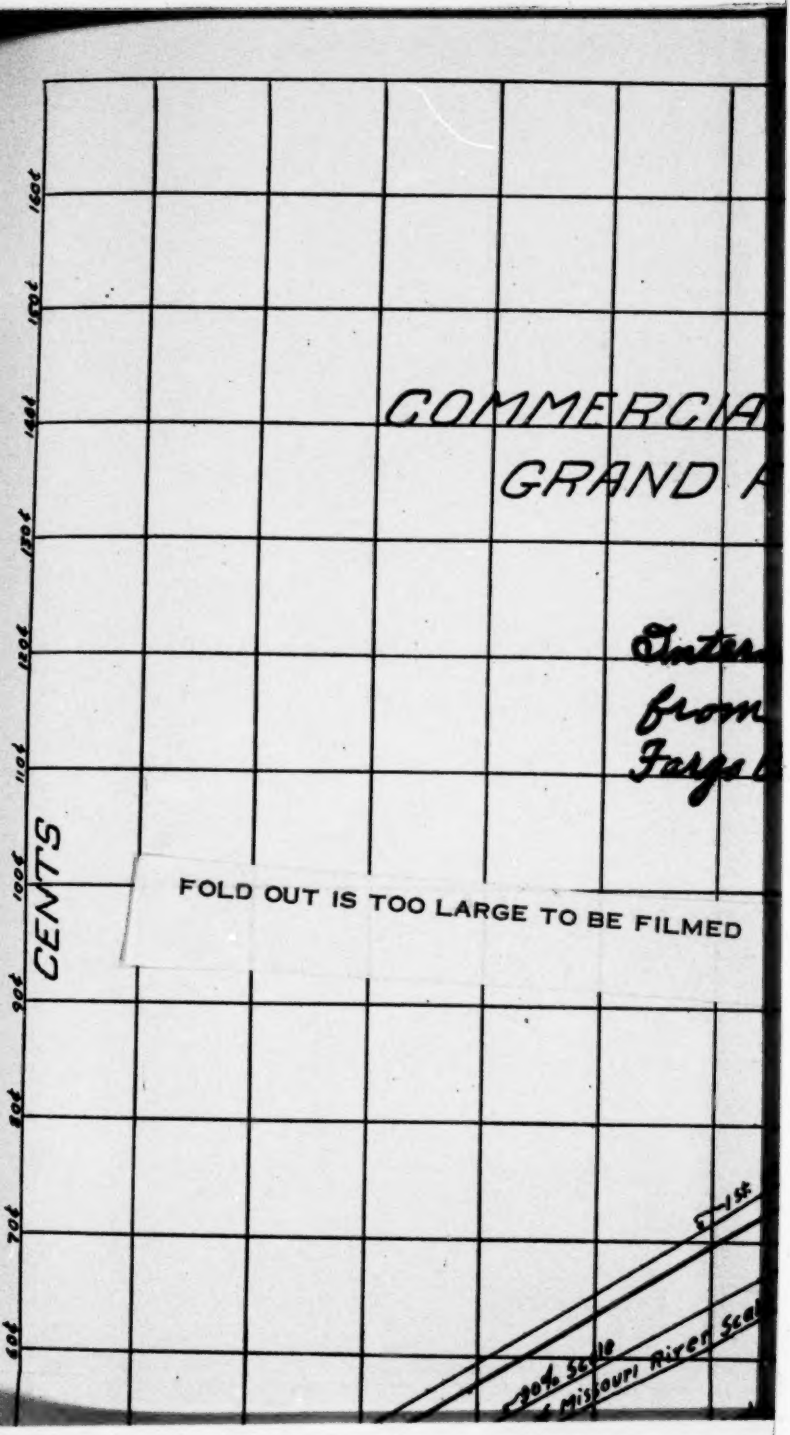
The blue prints attached hereto, marked Exhibit A and Exhibit B, are the blue prints which were attached to T. A. Durrant's affidavit, to which blue prints affiant has added by a red line the class rates prescribed by the Interstate Commerce Commission's order dated June 2, 1925, in the case of Commercial Club of Fargo v. A. & W. Ry. Co. et al., 98 I. C. C. 691, which scale of class rates is hereinafter referred to as the "Fargo scale." Said Fargo scale was prescribed for interstate application from Fargo to points in Minnesota within a radius of 150 miles of Fargo, and from the Twin Cities and Duluth to Fargo, Valley City and Jamestown, North Dakota, and also from the Twin Cities and Duluth and from Moorhead, Minn., and from certain other jobbing points in northwestern Minnesota to points in Minnesota distant not more than 150 miles from Fargo. Said fourth class Fargo scale rates are shown by the blue print Exhibit B to be higher than or the same as the present North Dakota intrastate fourth class rates for dis-
[fol. 97] tances up to 320 miles and higher than the fourth class rates prescribed by the North Dakota Commission for intrastate application for all distances shown on said blue print. Said first class Fargo scale of rates shown on Exhibit A are higher than the first class rates ordered by the North Dakota Commission for intrastate application in North Dakota for all distances up to approximately 340 miles.

As alleged in paragraph XI of the bill of complaint herein, more than 85% of all North Dakota intrastate traffic which moves on class rates moves for distances under 160 miles; and at least 40% of North Dakota intrastate traffic moving on class rates moves on the fourth class rates.

The rates on brick, grain and reinforced concrete pipe, referred to on pages 3 to 5 of T. A. Durrant's affidavit, are commodity rates and not class rates.

It is stated on page 6 of T. A. Durrant's affidavit "that Minneapolis, St. Paul and Duluth do not pay the regular interstate scale, but enjoy a scale approximately 10% lower than the interstate scale, and that if the jobbing towns in North Dakota are given like treatment that their rates would be approximately on the same level mile for mile as Minnesota jobbing towns are given to points in North Dakota." Apparently Exhibits C and D were prepared to support the foregoing statement. By a careful selection of destination points in North Dakota, however, a picture has been shown which is not representative of the real situation with respect to the rates from Minneapolis, St. Paul and Duluth to points in North Dakota as compared with the present intrastate rates in North Dakota for similar distances. As a matter of fact, the existing class rates from St. Paul, Minneapolis and Duluth to points in North Dakota are approximately 5% less than the rates which apply today intrastate in North Dakota, while the North Dakota Commission's order of May 8, 1929, would make a reduction of 10% in the rates from, to and between all the important shipping points within the state, thus reducing the North Dakota intrastate class rates below the level of the present interstate rates from St. Paul, Minneapolis and Duluth to North Dakota points. Even an examination of the rates and points selected in Exhibit C shows that the rates from Minneapolis and Duluth to North Dakota are not as much as 10% below the North Dakota intrastate rates for similar distances. A computation of the rates shown on the exhibit shows that on the average [fol. 98]the rates from Minneapolis and Duluth to the selected destinations in North Dakota are less than the present North Dakota intrastate scale of rates to the extent of but 5.4% for the three railroads shown.

The showing made in Exhibit D would be entirely different if other points had been selected. For instance, while the first class rate from Minneapolis to Cooperstown, North Dakota, is $1.28 per cwt. for 346 miles, the first class rate from Minneapolis to Dundas, North Dakota, is $1.42½ for 350.7 miles, and the first class rate from Minneapolis to


COMMERCIA
GRAND A
CENTS
FOLD OUT IS TOO LARGE TO BE FILMED

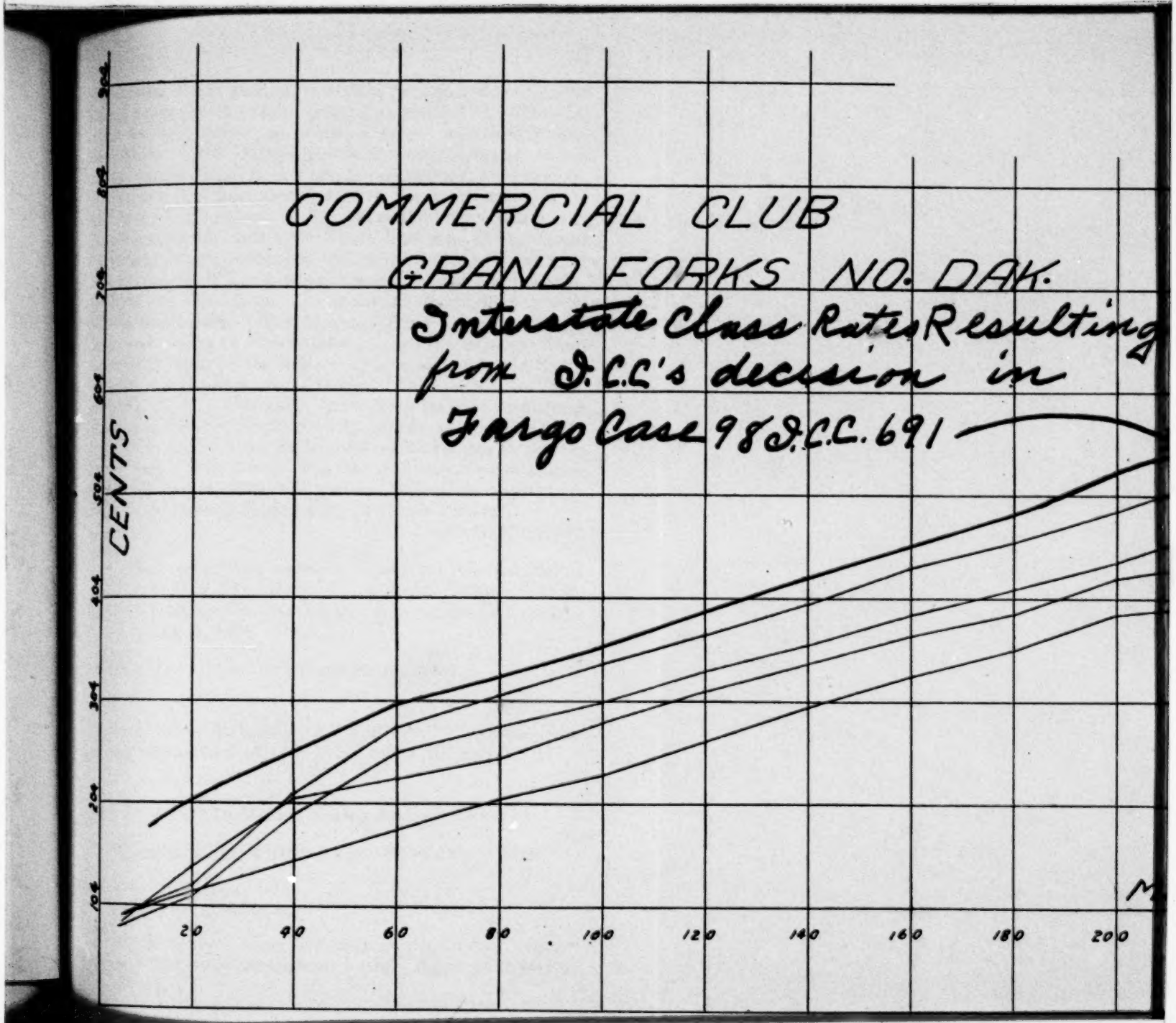
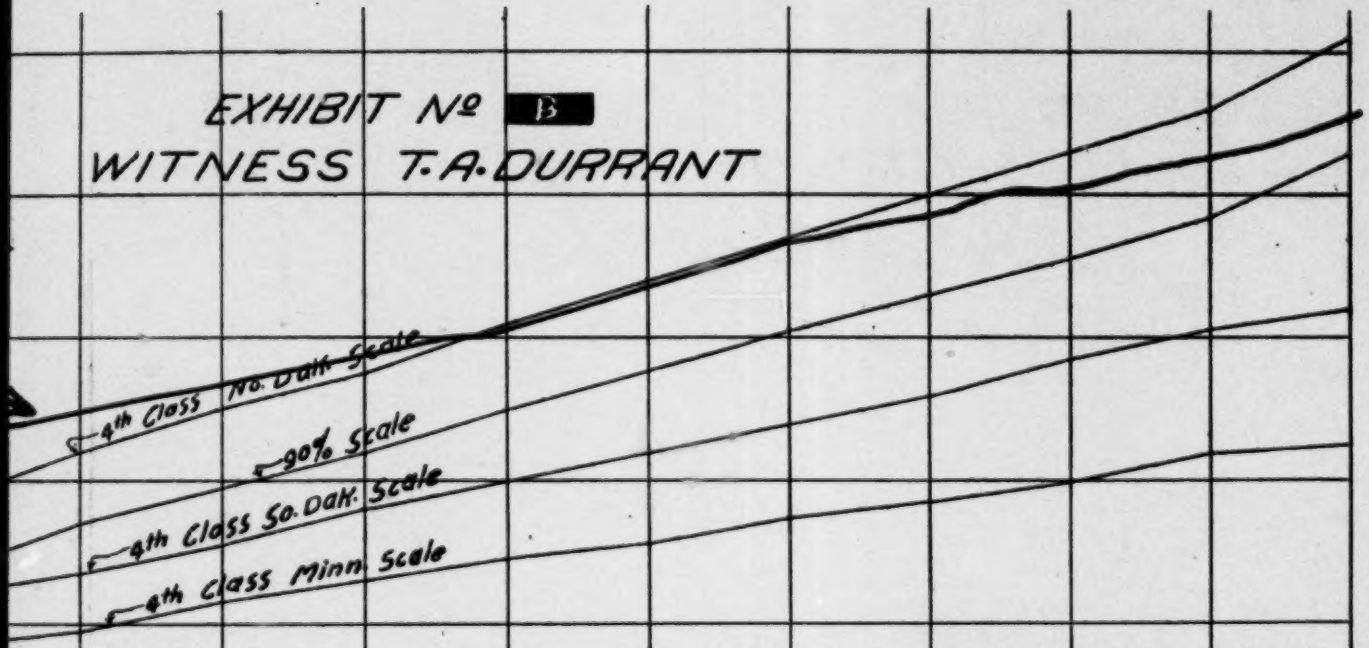

COMMERCIAL CLUB
GRAND FORKS NO. DAK.
Interstate Class Rates Resulting
from I.C.C's decision in
Fargo Case 98 I.C.C. 691
CENTS
20
40
60
80
100
120
140
160
180
200

EXHIBIT Nº B
WITNESS T.A. DURRANT

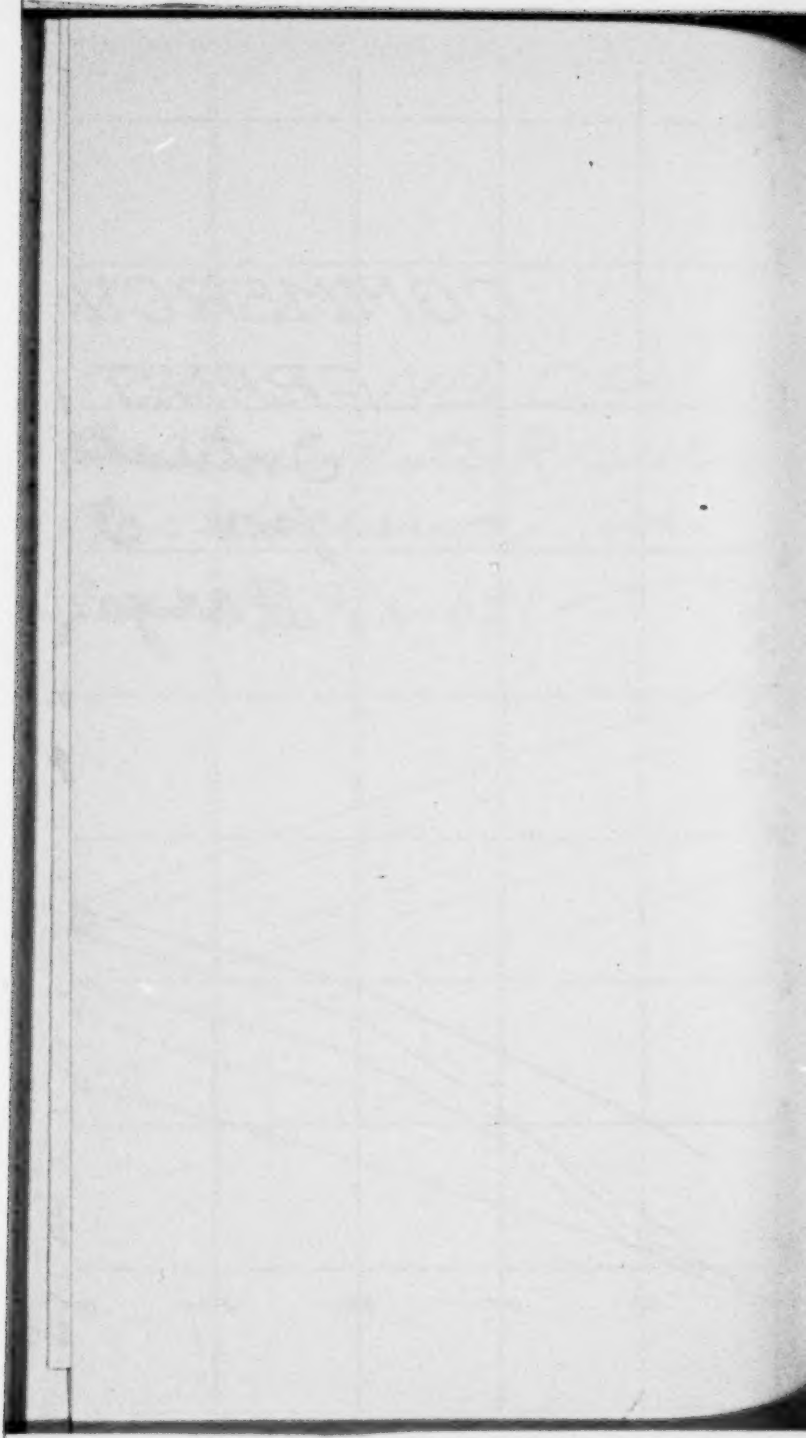


SCALE OF 4th CLASS RATES APPLYING IN TERRITORY WITH THE PROPOSED SCALE

NO. DAK.	SCALE	STARTS AT	9
90%	"	"	8
SO. DAK.	"	"	8½
MINN.	"	"	9

ILES

220 240 260 280 300 320 340 360 380 400



Buchanan, North Dakota, is $1.33½ for 346.4 miles. All of these rates are shown on page 2 of Exhibit C. The reasons for this variation in rates from Minneapolis and Duluth to North Dakota points for approximately equal distances are found in competitive conditions, for example, the longer line meeting the rate of the shorter line, as is the case of Hannaford, N. D., where the longer line of the Northern Pacific meets the short line rate of the Great Northern, which influences the rate at Cooperstown and has depressed it below what it would be but for the competition of the Great Northern at contiguous points. Furthermore, these specific rates from Minneapolis, St. Paul and Duluth to North Dakota points do not apply from interior jobbing points in Minnesota to points within North Dakota, for example, from Detroit Lakes, Minn., to Cooperstown, N. D. The rates from these interior Minnesota jobbing points to North Dakota points are on the same level as or higher than the present North Dakota intrastate scale which the North Dakota Railroad Commission's order of May 8, 1929, will reduce 10% when applied to, from or between jobbing points in North Dakota.

James G. Morrison.

Subscribed and sworn to before me this 3rd day of July, 1929. Jessie O. Bohrer, Notary Public, Ramsey County, Minn. My commission expires Aug. 8, 1934. (Seal.)

[fol. 99] [File endorsement omitted.]

(Here follow Exhibits "A" and "B," diagrams illustrating comparison of rates, side folios 100 and 101.)

[fols. 102 & 103] In United States District Court

Affidavit of P. B. Beidelman—Filed July 3, 1929

State of Minnesota,
County of Ramsey, ss:

P. B. Beidelman, being first duly sworn, on oath deposes and says that he is the General Freight Agent of the Great

Northern Railway Company, one of the plaintiffs in th above entitled proceeding; that as such General Freigh Agent he has charge and supervision of the establishme and publication of intrastate and interstate freight rat on said railroad; that he has been engaged in railroa traffic work for more than 29 years and has made a stud of and is familiar with the class rate adjustment on th plaintiff railroads in North Dakota, and interstate to, fro and through the state of North Dakota.

That he has read the affidavit of James G. Morrison the above entitled proceeding and that the facts there stated are true and correct to the best of his knowled and belief.

P. B. Beidelma

Subscribed and sworn to before me this 3rd day July, 1929. Jessie O. Bohrer, Notary Publ Ramsey County, Minn. My commission expi Aug. 8, 1934. (Seal.)

[File endorsement omitted.]

[fol. 104] IN UNITED STATES DISTRICT COURT

DECISION—Filed July 8, 1929

This cause was heard on the 2nd day of July, 1929, St. Paul, Minnesota, with the consent of all parties, u an application by the plaintiffs duly made to a court three judges, constituted under Section 266 Judicial Co for an interlocutory injunction against the defendants, straining them from putting into effect an order of Board of Railroad Commissioners of the State of No Dakota of May 8, 1929.

The order of the Board, of which complaint is made, vides for a scale of class rates on certain classes of fre between jobbing points within the state of North Dak which are approximately ten per cent lower than the r now in effect.

The plaintiffs, railroads engaged in intrastate comm in and interstate commerce into the state of North Dak contend that the order of May 8, 1929, seeks to put effect rates which are unlawful because unduly discrim tory against interstate commerce and in violation of Se

[fol. 105] 13 of the Interstate Commerce Act; that there has been in the state of North Dakota for many years an established and recognized relationship between interstate and intrastate class rates; that the Interstate Commerce Commission in 1920, when there was a general increase in interstate rates, required that intrastate rates in North Dakota be proportionally raised; that when the interstate rates in 1922 were reduced ten per cent, the intrastate rates were also similarly reduced; that the interstate rates have not since been lowered, but, where changes have been made, have been increased, so that today intrastate rates are generally more favorable in comparison with interstate rates than heretofore; that since 1925 there has been pending before the Interstate Commerce Commission an investigation known as "Rate Structure Investigation, Docket 17,000," in which the question of the relationship in North Dakota of interstate to intrastate rates is being considered and will be determined, and in which proceeding the State Board has participated; that, in addition, the plaintiffs have, since May 8, 1929, commenced another proceeding raising the question of the validity of the intrastate rates fixed by the order of May 8th; that, if that order becomes effective, the carriers will be forced to put into effect rates that are unlawful, or, upon their failure so to do, be subjected to the penalties provided by the laws of the State for failure to comply with the order; that if they do comply with it and if it shall eventually be determined to be unlawful, they will have lost substantial revenues and they and the public will have suffered those disadvantages which follow from a situation where intrastate rates are unduly out of line with interstate rates.

The defendants contend that the showing made by the plaintiffs is not sufficient to justify the issuance of the injunction prayed for; that the presumption is that the intra-[fol. 106] state rates fixed by the Board are not unduly out of line with interstate rates; that there will be no irreparable loss or damage even if it should be held that the class rates fixed by the order of May 8th are violative of Section 13 of the Interstate Commerce Act; that there is not now and has not been for some years any fixed relationship between the interstate and intrastate rates, and that this Court should not interfere with the order of the North Dakota Board made after a full hearing and due deliberation, or

require those affected by it to wait for relief until the Interstate Commerce Commission files a decision in Docket No. 17,000 or otherwise determines the validity of the intrastate rates sought to be established.

The position of the defendants is not unreasonable. It is evident, from the recitals in the order of the State Board, that the length of time consumed by the Interstate commerce Commission in reaching a decision in Docket No. 17,000, has, in the opinion of the State Board, resulted in a denial of justice with respect to the rates in question, and that jobbers at certain jobbing points in the State are believed to be unduly prejudiced because of alleged disparity between intrastate class rates and interstate class rates from outside jobbing points, and that it was in an endeavor to do away with the discrimination believed to exist that the order of May 8th as made. It is conceded—as, of course, it must be—that this court has no power to determine the question as to whether the rates fixed by the order of May 8th do or do not discriminate against interstate commerce, or whether they do or do not create an undue disparity between intrastate and interstate rates. That question is before the Interstate Commerce Commission and it alone has jurisdiction to determine it. It may find that the State Board was well within its rights in doing what was done, or it may find to the contrary. We think, however, in view of the pendency of Docket No. 17,000, that the orderly [fol. 107] and logical way to have the question finally settled is to permit the Interstate Commerce Commission to complete that investigation and file its decision before there shall be an attempt to adjust intrastate class rates even to the extent attempted by the order of May 8th. Such rates, if they prove temporary merely—as the plaintiffs contend they will—will only briefly afford the relief sought and may ultimately prove more of a disadvantage than otherwise to those for whose benefit they are intended, while at the same time they may cause a substantial loss to the carriers and an undue burden upon interstate commerce. On the other hand, if the rates are lawful—as the defendants claim—and are enjoined, their effectiveness cannot long be postponed in any event, and, to a considerable extent, the injury done by staying their effectiveness can be mitigated by requiring the railroads to make reparation in case it is found that they do not encroach upon interstate commerce

and that the State Board was within its rights in fixing them.

We do not pass upon the question as to whether the mere fact that a controversy exists between a carrier and a state rate-making body as to the validity of an intrastate rate alleged to discriminate against interstate commerce, justifies an injunction such as prayed for here, or whether a carrier may, by commencing a proceeding before the Interstate Commerce Commission to test the validity of an intrastate rate under Section 13 of the Interstate Commerce Act, after an order has been made by a state commission fixing such rate, properly call for injunctive relief. Our opinion is, however, that, under the circumstances of this case, this Court can and should for the purpose of preserving the status quo until such time as the Interstate Commerce Commission may complete its investigation and file its decision in Docket No. 17,000, grant an interlocutory injunction restraining the defendants from putting into effect [fol. 108] the order of May 8, 1929, upon the plaintiff's furnishing a bond in the sum of $150,000.00 to be approved by any one of the Judges who sat at this hearing—conditioned that if it shall be determined that the rates fixed by the order of May 8th were lawful rates, they will make refunds of the difference between what intrastate shippers have been required to pay and what they would have paid if an injunction had not been granted.

If, for any reason, the Interstate Commerce Commission should fail or refuse to decide whether the rates fixed by the order of May 8, 1929, are violative of Section 13 of the Interstate Commerce Act, or to make findings or reach a decision from which that question may be fairly determined, or shall hereafter unreasonably delay determination of that question, the defendants may move for a vacation of the injunction.

An order may be drawn granting the application for an interlocutory injunction, in accordance with Section 383, Title 28, U. S. C., to be effective upon the filing of the bond herein provided for.

Dated this 6th day of July, 1929.

Archibald K. Gardner, United States Circuit Judge.
Andrew Miller, United States District Judge.
John B. Sanborn, United States District Judge.

[File endorsement omitted.]

[fol. 109] IN UNITED STATES DISTRICT COURT

INTERLOCUTORY INJUNCTION—Filed July 9, 1929

The motion of plaintiffs for an interlocutory injunction in this case having come on regularly to be heard on the 2nd day of July, 1929, by the Honorable A. K. Gardner, Circuit Judge, and the Honorable Andrew Miller and the Honorable John B. Sanborn, District Judges, in the Federal Court Room in the City of St. Paul, Minnesota; and it appearing that five days' notice of said hearing has been duly given to the Governor and the Attorney General of the state of North Dakota and to the defendants in this case, as provided by law, and that the plaintiffs and defendants have filed a stipulation in writing that said motion may be heard at the City of St. Paul, Minnesota; and the Court having heard the arguments of counsel for plaintiffs and defendants and being fully advised in the premises,

And it appearing to the satisfaction of the Court that the establishment of the scale of distributing or jobbing class rates required by the order of May 8, 1929, of the Board of Railroad Commissioners of North Dakota in Case No. 2255 and Case No. 2875, will result in rates substantially below the interstate class rates applying to and from North Dakota for similar services; that there are now proceedings pending before the Interstate Commerce Commission in which the plaintiffs herein and the defendant board have participated and in which said Interstate Commerce Commission will determine whether the disparities between said interstate rates and the intrastate rates required by said order of May 8, 1929, result in an unjust discrimination against and burden upon interstate commerce in violation of Section 13 of the Interstate Commerce Act; that if plaintiffs are required to establish the intrastate rates required by said order to be made effective July 12, 1929, and if the Interstate Commerce Commission later determines in said proceedings that said reduced intrastate rates are unreasonably low and that their establishment and collection results in such unjust discrimination against interstate commerce plaintiffs will suffer large revenue losses prior to such determination by the Interstate Commerce Commission and will be irreparably damaged and an unlawful

burden will be placed on interstate commerce; that if said order is enjoined until the Interstate Commerce Commission determines said questions such irreparable damage will be avoided, and shippers and receivers of traffic moving on North Dakota intrastate class rates subsequent to July [fol. 110] 12, 1929, will be in position to recover the difference between the present rates and those prescribed in said order if the Interstate Commerce Commission later determines that the distributing or jobbing rates required by said order of May 8, 1929, do not result in unjust discrimination against interstate commerce; that unless said intrastate rates are enjoined plaintiffs have no plain, adequate or complete remedy at law; and that if said order is not complied with plaintiffs will be subjected to numerous proceedings and prosecutions both for equitable and mandatory relief and to a multiplicity of penalties and fines, although the Interstate Commerce Commission shall later determine that said intrastate rates result in an unjust discrimination against interstate commerce;

It is therefore hereby ordered that the said Board of Railroad Commissioners of the state of North Dakota, and C. W. McDonnell, Fay Harding and Ben C. Larkin as members of said Board, and James Morris as Attorney General of the state of North Dakota, and their successors in office and their servants, employes, agents and all persons acting under the control or authority of any and all of said defendants, be, and each of them hereby is, enjoined and restrained from putting into effect or enforcing, or attempting to put into effect or to enforce, the scale of distributing or jobbing class rates prescribed by the order of May 8, 1929, of the Board of Railroad Commissioners of the state of North Dakota in Case No. 2255 and Case No. 2875, and from instituting any action or proceeding of any sort whatsoever to enforce said scale of distributing or jobbing class rates or to hinder or obstruct the charging or collecting by plaintiffs of the existing scale of class rates for transportation between points in the state of North Dakota, and from instituting any proceeding to subject plaintiffs to any penalties for failure to comply with the said provisions of said order of May 8, 1929, and from ordering, seeking, aiding or abetting in any manner whatever any person to commit any or either of the acts aforesaid.

And it is further hereby ordered that the said defendants, and each of them, are so enjoined and restrained until the Interstate Commerce Commission has determined, either in its Docket 17000, Part 2, now pending for decision, or in the proceeding under Section 13 of the Interstate Commerce Act which the plaintiffs herein have petitioned the Interstate Commerce Commission to institute, the question of whether the establishment and collection of the intrastate [fol. 111] distributing or jobbing scale of *of* class rates prescribed in said order of May 8, 1929, causes any undue or unlawful advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or in undue, unreasonable, or unjust discrimination against interstate or foreign commerce, and until the further order of this Court.

And it is further ordered that a copy hereof be served upon each of the defendants and that from and after the date of service each and all of said defendants shall observe and comply herewith.

And it is further ordered that this interlocutory injunction shall become effective upon the filing of bonds in the aggregate amount of $150,000.00 in favor of the United States of America, for the benefit of those affected by the injunction, as follows, to-wit:

By the Great Northern Railway Company in the penal sum of Forty-five Thousand Dollars ($45,000.00);

By the Northern Pacific Railway Company in the penal sum of Forty-five Thousand Dollars ($45,000.00);

By the Minneapolis, St. Paul & Sault Ste. Marie Railway Company in the penal sum of Thirty Thousand Dollars ($30,000.00);

By the Chicago, Milwaukee, St. Paul & Pacific Railroad Company in the penal sum of Twenty Thousand Dollars ($20,000.00);

By the Farmers Grain and Shipping Company in the penal sum of Ten Thousand Dollars ($10,000.00);

such bonds to be conditioned that, if it shall be determined that the rates fixed by the order of May 8, 1929, were lawful rates, said plaintiffs will make refunds of the difference between what intrastate shippers have been required to pay

and what they would have paid if an injunction had not been granted.

Dated this 9th day of July, 1929.

Archibald K. Gardner, U. S. Circuit Judge. Andrew Miller, U. S. District Judge. John B. Sanborn, U. S. District Judge.

[File endorsement omitted.]

[fol. 112] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL TO SUPREME COURT OF THE UNITED STATES AND ORDER ALLOWING SAME—Filed July 31, 1929

Now comes the above named appellants, Board of Railroad Commissioners of the State of North Dakota, and C. W. McDonnell, Fay Harding and Ben C. Larkin as members of and constituting said Board, and James Morris as Attorney General of the State of North Dakota, by their counsel, and feeling themselves aggrieved by the decree granting an interlocutory injunction herein, which decree was entered on the 9th day of July, A. D. 1929, and upon said day entered upon the journals of the District Court of the United States for the District of North Dakota, Southwestern Division, hereby pray that an appeal may be allowed from the decree granting said interlocutory injunction of the District Court of the United States for the District of North Dakota, Southwestern Division, to the Supreme Court of the United States, for the reasons set forth in the assignments of error hereto attached and made a part hereof.

Petitioners further pray that a citation issue as provided by law and that a transcript of record of such proceedings and documents upon which said decree was based as set out in the præcipe, duly authenticated, be sent to the Supreme Court of the United States sitting at Washington, D. C. under the rules of such Court in such cases made and provided.

Dated this 30th day of July, A. D. 1929.

James Morris, Attorney General of the State of North Dakota and Attorney for Defendants and Appellants.

Appeal allowed upon giving bond as allowed by law in the sum of — Dollars.

I hereby certify that the matter in controversy herein as shown by the records, exceeds in value $3,000.00, exclusive of interest and costs.

Andrew Miller, Judge of the District Court of the United States for the District of North Dakota.

[fol. 113] Due and personal service of the within Petition and Order by copy is hereby acknowledged this 30th day of July, 1929.

Lawrence, Murphy & Nilles, D. F. Lyons, F. J. Gehan, J. N. Davis, A. H. Lossow, F. G. Dorety, R. J. Hagman, Attorneys for Plaintiffs and Appellees.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ASSIGNMENTS OF ERROR ON APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed July 31, 1929

Now come the above named defendants and appellants, by their counsel, and in connection with their Petition for Appeal, say that in the record, proceedings and in the decree granting an interlocutory injunction against these defendants and appellants, manifest error has intervened to the prejudice of the defendants, to-wit:

I

The Court erred in finding and deciding that the enforcement of the order of the Board of Railroad Commissioners of the State of North Dakota dated May 8, 1929 will result in rates substantially below interstate class rates applying to and from North Dakota for similar services.

II

The Court erred in finding and deciding that the plaintiffs will be irreparably damaged by the enforcement of the defendant, Board of Railroad Commissioners' Order of May 8, 1929.

III

The Court erred in finding and deciding that there are now pending before the Interstate Commerce Commission proceedings in which the plaintiffs herein and the defendant, Board of Railroad Commissioners, have participated in which said Interstate Commerce Commission will determine whether the disparities between said interstate rates and the intrastate rates required by said order of May 8, 1929, result in an unjust discrimination against and burden upon interstate commerce in violation of Section 13 [fols. 114-117] of the Interstate Commerce Act.

IV

That the Court erred in finding and deciding that the enforcement of said order of May 8, 1929 will or might result in an unlawful burden upon interstate commerce.

V

That the Court erred in finding and deciding that unless said intrastate rates, as fixed by said order of May 8, 1929, are enjoined, the plaintiffs have no plain, adequate or complete remedy at law.

VI

That the Court erred in finding and deciding that if said order of May 8, 1929, is not complied with, the plaintiffs will be subjected to numerous proceedings and prosecutions both for equitable and mandatory relief and to a multiplicity of penalties and fines, although the Interstate Commerce Commission shall later determine that said intrastate rates shall result in an unjust discrimination against interstate commerce.

VII

That the Court erred in enjoining and restraining the defendants and appellants until the Interstate Commerce Commission has made a determination, either in its Docket 17,000, Part 2, now pending for decision, or in the proceeding under Section 13 of the Interstate Commerce Act, or until the further order of the Court.

VIII

That the Decree granting said interlocutory injunction is contrary to law.

Wherefore Defendants pray that the Decree of the United States District Court for the District of North Dakota, Southwestern Division, entered July 9, 1929, be reversed.

Dated this 30th day of July, 1929.

James Morris, Attorney General of North Dakota and Attorney for Defendants and Appellants.

[File endorsement omitted.]

[fol. 118] IN SUPREME COURT OF THE UNITED STATES

AFFIDAVIT OF SERVICE

STATE OF NORTH DAKOTA,
County of Cass, ss:

L. Margaret Schmallen, being first duly sworn, on oath deposes and says: That she is a resident of the City of Fargo, Cass County, North Dakota, and a citizen of the United States of America; over the age of twenty-one years; not a party to the above entitled proceeding, nor related to any of the parties thereto, nor interested in said matter:

That in the City of Fargo, Cass County, North Dakota, on the 11th day of September, A. D. 1929, she served the annexed Statement of Points Relied Upon Upon Appeal to the Supreme Court and Designation of Parts of the Record Necessary for the Consideration Thereof upon the copartnership of Lawrence, Murphy & Nilles, attorneys for plaintiffs and appellees in the above entitled action, by handing to and leaving with Herbert G. Nilles, also known as H. G. Nilles, one of the partners and a member of said firm of Lawrence, Murphy & Nilles, personally, a true and correct copy of said Statement hereto attached.

That she knew the person so served to be H. G. Nilles, a member of said firm of Lawrence, Murphy & Nilles, and one of the attorneys for the plaintiffs and appellees.

L. Margaret Schmallen.

Subscribed and sworn to before me this 11th day of September, A. D. 1929. C. C. Wattam, Notary Public, Cass County, N. Dak. My commission expires July 29, 1932. (Seal of C. C. Wattam, Notary Public, State of North Dakota.)

[fol. 119] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS RELIED UPON UPON APPEAL TO THE SUPREME COURT AND DESIGNATION OF PARTS OF THE RECORD NECESSARY FOR THE CONSIDERATION THEREOF—Filed Sept. 13, 1929

Now come the above named defendants, and as points upon which they intend to rely in this appeal, state the following:

I

The order of the Railroad Commission of the State of North Dakota dated May 8, 1929, will not result in an unlawful burden upon interstate commerce.

II

That the plaintiffs had at the time of the commencement of this action a plain, adequate and complete remedy at law in the Courts of the State of North Dakota.

III

That the pendency of a proceeding before the Interstate Commerce Commission under the Hoch Smith Resolution known as Docket 17,000, Part 2, is not ground for and does not give the Court jurisdiction to grant an interlocutory injunction.

[fol. 120]

IV

That the pendency before the Interstate Commerce Commission of a proceeding under Section 13 of the Interstate Commerce Act involving the order of the Board of Railroad Commissioners of May 8, 1929, is not ground for an

injunction and does not give the Court jurisdiction to grant an interlocutory injunction.

V

That the discretion of the Board of Railroad Commissioners in fixing intrastate rates should not be interfered with by the Courts in the absense of a finding by the Interstate Commerce Commission to the effect that such intrastate rates cast a burden upon interstate commerce or discriminate against persons or places engaged in interstate commerce.

That in order to present the foregoing points to the Court it is necessary that the following portions of the record be considered and the Clerk of said Court is, therefore, hereby requested to print the following portions of said record, to-wit:

Bill of Complaint.
Application for Interlocutory Injunction.
Stipulation—Filed June 25, 1929.
Order of July 1st Setting Case Down for Hearing.
Amendment to Bill of Complaint.
Answer.
Decision.
Interlocutory Injunction.
Petition for Appeal and Order Allowing Same.
Assignments of Error.

Dated this 10th day of September, 1929.

James Morris, Attorney General of the State of North Dakota and Attorney for Defendants.

[fols. 121 & 122] Service of the within and annexed Statement of Points Relied Upon Upon Appeal to the Supreme Court and Designation of Parts of the Record Necessary for the Consideration Thereof is hereby admitted this 11th day of September, 1929.

—— ——, Attorneys for Plaintiffs and Appellees.

[fol. 123] [File endorsement omitted.]

[fol. 124] IN SUPREME COURT OF THE UNITED STATES

DESIGNATION OF ADDITIONAL PARTS OF RECORD CONSIDERED MATERIAL—Filed Sept. 30, 1929

Now come the plaintiffs and appellees above named, by their counsel, and state that they consider material to the determination of this appeal the following parts of the record in addition to those specified by counsel for defendants and appellants in their designation dated September 10, 1929:

Affidavit of James G. Morrison.
Affidavit of P. B. Biedelman.
Affidavit of Neal Williams.
Affidavit of T. A. Durrant.
Affidavit of G. M. Springer.

and the Clerk is respectfully requested to include said affidavits in the printed record.

Dated at St. Paul, Minnesota, this 21st day of September, 1929.

D. F. Lyons, H. H. Field, H. S. Mitchell, F. G. Dorety, R. J. Hagman, Attorneys for Plaintiffs and Appellees.

[fol. 125] Due service of the within Statement of Additional Parts of Record Considered Material by the receipt of a true and correct copy thereof is hereby acknowledged this 23rd day of September, 1929.

James Morris, Attorney for Defendants and Appellants.

[fol. 126] [File endorsement omitted.]

Endorsed on cover: File No. 34,495. North Dakota D. C. U. S. Term No. 364. Board of Railroad Commissioners of the State of North Dakota, C. W. McDonnell, Fay Harding, et al., etc., appellants, vs. Great Northern Railway Company, Northern Pacific Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, et al. Filed August 31st, 1929. File No. 34,495.

FILE COPY

Office Supreme Court, U. S.
FILED
SEP 27 1929
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1929

No. 364

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY, CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, AND FARMERS GRAIN AND SHIPPING COMPANY, Plaintiffs,

v.

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF NORTH DAKOTA, AND C. W. McDONNELL, FAY HARDING AND BEN C. LARKIN AS MEMBERS OF AND CONSTITUTING SAID BOARD, AND JAMES MORRIS AS ATTORNEY GENERAL OF THE STATE OF NORTH DAKOTA, Defendants.

STATEMENT DISCLOSING BASIS ON WHICH THE SUPREME COURT HAS JURISDICTION TO REVIEW ON APPEAL.

Supreme Court of the United States

OCTOBER TERM, 1929

No. 364

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY, CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, AND FARMERS GRAIN AND SHIPPING COMPANY, Plaintiffs,

v.

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF NORTH DAKOTA, AND C. W. McDONNELL, FAY HARDING AND BEN C. LARKIN AS MEMBERS OF AND CONSTITUTING SAID BOARD, AND JAMES MORRIS AS ATTORNEY GENERAL OF THE STATE OF NORTH DAKOTA, Defendants.

STATEMENT DISCLOSING BASIS ON WHICH THE SUPREME COURT HAS JURISDICTION TO REVIEW ON APPEAL.

Now come the above named defendants and state to the Court that the Supreme Court of the United States has jurisdiction to review the above entitled action on appeal from the District Court of the United States for the District of North Dakota, Southwestern Division, upon and for the following grounds:

A.

Jurisdiction is sustained upon appeal by the following statutory provision.

"No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State

in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such state, shall be issued or granted by any Justice of the Supreme Court, or by any district thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a Justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application.**** An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case.****"
U. S. C. A. Title 28, Paragraph 380.

B.

The decree herein from which this appeal is taken was entered in the office of the Clerk of the District Court of the United States for the District of North Dakota, Southwestern Division, on the 9th day of July, A. D. 1929. (Original record page_____.)

The application for appeal herein was presented to the Honorable Andrew Miller, District Judge, on the 30th day of July, 1929, and was on said date allowed. (Original record page_____.)

C.

STATEMENT OF THE NATURE OF THE CASE AND THE RULINGS BELOW WHICH BRING THE CASE WITHIN THE JURISDICTIONAL PROVISION RELIED ON.

This case is an action brought by the plaintiffs under the Commerce Clause of the Constitution of the United States and the Fourteenth Amendment thereof and the Act of Congress known as the Interstate Commerce Act (Bill of Complaint, Paragraph 1), to enjoin the defendants from putting into effect and enforcing an Order of the Board of Railroad Commissioners of the State of North Dakota dated May 8, 1929, which Order establishes a scale of distributing or jobbing freight rates between seventeen designated points in North Dakota and between these points and all other points within the State of North Dakota. The effective

date of said Order of May 8th was by said Board of Railroad Commissioners postponed until July 12, 1929. On July 9, 1929, and before said Order became effective, the United States District Court, consisting of one Circuit Judge and two District Judges sitting in banc, under the statute above quoted, granted an interlocutory injunction in the following terms:

The motion of plaintiffs for an interlocutory injunction in this case having come on regularly to be heard on the 2nd day of July, 1929, by the Honorable A. K. Gardner, Circuit Judge, and the Honorable Andrew Miller and the Honorable John B. Sanborn, District Judges, in the Federal Court Room in the City of St. Paul, Minnesota; and it appearing that five days' notice of said hearing has been duly given to the Governor and the Attorney General of the State of North Dakota and to the defendants in this case, as provided by law, and that the plaintiffs and defendants have filed a stipulation in writing that said motion may be heard at the City of St. Paul, Minnesota; and the Court having heard the arguments of counsel for plaintiffs and defendants and being fully advised in the premises,

And it appearing to the satisfaction of the Court that the establishment of the scale of distributing or jobbing class rates required by the order of May 8, 1929, of the Board of Railroad Commissioners of North Dakota in Case No. 2255 and Case No. 2875, will result in rates substantially below the interstate class rates applying to and from North Dakota for similar services; that there are now proceedings pending before the Interstate Commerce Commission in which the plaintiffs herein and the defendant board have participated and in which said Interstate Commerce Commission will determine whether the disparities between said interstate rates and the intrastate rates required by said order of May 8, 1929, result in an unjust discrimination against and burden upon interstate commerce in violation of Section 13 of the Interstate Commerce Act; that if plaintiffs are required to establish the intrastate rates required by said order to be made effective July 12, 1929, and if the Interstate Commerce

Commission later determines in said proceedings that said reduced intrastate rates are unreasonably low and that their establishment and collection results in such unjust discrimination against interstate commerce plaintiffs will suffer large revenue losses prior to such determination by the Interstate Commerce Commission and will be irreparably damaged and an unlawful burden will be placed on interstate commerce; that if said order is enjoined until the Interstate Commerce Commission determines said questions such irreparable damage will be avoided and shippers and receivers of traffic moving on North Dakota intrastate class rates subsequent to July 12, 1929, will be in position to recover the difference between the present rates and those prescribed in said order if the Interstate Commerce Commission later determines that the distributing or jobbing rates required by said order of May 8, 1929, do not result in unjust discrimination against interstate commerce; that unless said intrastate rates are enjoined plaintiffs have no plain, adequate or complete remedy at law; and that if said order is not complied with plaintiffs will be subjected to numerous proceedings and prosecutions both for equitable and mandatory relief and to a multiplicity of penalties and fines, although the Interstate Commerce Commission shall later determine that said intrastate rates result in an unjust discrimination against interstate commerce;

IT IS THEREFORE HEREBY ORDERED that the said Board of Railroad Commissioners of the State of North Dakota, and C. W. McDonnell, Fay Harding and Ben C. Larkin as members of said Board, and James Morris as Attorney General of the State of North Dakota, and their successors in office and their servants, employees, agents and all persons acting under the control or authority of any and all of said defendants, be, and each of them hereby is, enjoined and restrained from putting into effect or enforcing, or attempting to put into effect or to enforce, the scale of distributing or jobbing class rates prescribed by the order of May 8, 1929, of the Board of Railroad Commissioners of the State of North Dakota in Case No. 2255 and Case No. 2875, and from instituting any action or proceeding of any sort whatsoever to enforce said scale of dis-

tributing or jobbing class rates or to hinder or obstruct the charging or collecting by plaintiffs of the existing scale of class rates for transportation between points in the State of North Dakota, and from instituting any proceeding to subject plaintiffs to any penalties for failure to comply with the said provisions of said order of May 8, 1929, and from ordering, seeking, aiding or abetting in any manner whatever any person to commit any or either of the acts aforesaid.

AND IT IS FURTHER HEREBY ORDERED that the said defendants, and each of them, are so enjoined and restrained until the Interstate Commerce Commission has determined, either in its Docket 17,000, Part 2, now pending for decision, or in the proceeding under Section 13 of the Interstate Commerce Act which the plaintiffs herein have petitioned the Interstate Commerce Commission to institute, the question of whether the establishment and collection of the intrastate distributing or jobbing scale of class rates prescribed in said order of May 8, 1929, causes any undue or unlawful advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or in undue, unreasonable, or unjust discrimination against interstate or foreign commerce, and until the further order of this Court.

AND IT IS FURTHER ORDERED that a copy hereof be served upon each of the defendants and that from and after the date of service each and all of said defendants shall observe and comply herewith.

AND IT IS FURTHER ORDERED that this interlocutory injunction shall become effective upon the filing of bonds in the aggregate amount of $150,000.00 in favor of the United States of America, for the benefit of those affected by the injunction, as follows, to-wit:

By the Great Northern Railway Company in the penal sum of Forty-five Thousand Dollars ($45,000.00);

By the Northern Pacific Railway Company in the penal sum of Forty-five Thousand Dollars ($45,000.00);

By the Minneapolis, St. Paul & Sault Ste. Marie Railway Company in the penal sum of Thirty Thousand Dollars ($30,000.00);

By the Chicago, Milwaukee, St. Paul & Pacific Railroad Company in the penal sum of Twenty Thousand Dollars ($20,000.00);

By the Farmers Grain and Shipping Company in the penal sum of Ten Thousand Dollars ($10,000.00);

such bonds to be conditioned that, if it shall be determined that the rates fixed by the order of May 8, 1929, were lawful rates, said plaintiffs will make refunds of the difference between what intrastate shippers have been required to pay and what they would have paid if an injunction had not been granted.

Dated this 9th day of July, 1929. (Original record page_____)

D.
CITATIONS

Phoenix Railway Company of Arizona vs. W. Paul Geary, Frank A. Jones and Amos W. Cole, Members of the Corporation Commission of the State of Arizona, et al. 239 U. S. 277. 60 L. ed. 287.

Jackson vs. Cravens. 238 Fed. 117.

Dated this 17th day of September, 1929.

Respectfully submitted,

/ JAMES MORRIS,
Attorney General and
Attorney for Defendants.

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CHARLES SCHROE CROPLEY
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1929

No. 364

Board of Railroad Commissioners of the State of North Dakota, and C. W. McDonnell, Fay Harding and Ben C. Larkin as members of and constituting said Board, and James Morris as Attorney General of the State of North Dakota,

Appellants,

vs.

Great Northern Railway Company, Northern Pacific Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Chicago, Milwaukee, St. Paul & Pacific Railroad Company, and Farmers Grain and Shipping Company,

Appellees.

APPELLANT'S BRIEF

JAMES MORRIS,
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Washington, D. C.
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IN THE

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Board of Railroad Commissioners of the State of North Dakota, and C. W. McDonnell, Fay Harding and Ben C. Larkin as members of and constituting said Board, and James Morris as Attorney General of the State of North Dakota,
Appellants,

vs.

Great Northern Railway Company, Northern Pacific Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Chicago, Milwaukee, St. Paul & Pacific Railroad Company, and Farmers Grain and Shipping Company,
Appellees.

APPELLANT'S BRIEF

REFERENCE TO OPINION BELOW

The opinion below, in the United States District Court for the District of North Dakota, is reported **Great Northern Ry. Co. et al. v. Board of Railroad Comm'rs of State of North Dakota et al.**, 33 Fed. 2d Series, 934.

STATEMENT OF GROUND OF JURISDICTION INVOKED

Jurisdiction to review the judgment below exists under Section 266 of the Judicial Code.

STATEMENT OF FACTS

This is an appeal to the Supreme Court of the United States from an order of the District Court of the United States for the District of North Dakota dated July 9, 1929, which order was in the form of an interlocutory injunction enjoining the

Board of Railroad Commissioners of the State of North Dakota and C. W. McDonnell, Fay Harding and Ben C. Larkin, as members of said Board, and James Morris as Attorney General of the State of North Dakota from putting into effect a scale of distributing or jobbing class rates prescribed by an order of the Board of Railroad Commissioners of the State of North Dakota dated May 8, 1929.

The facts leading up to the issuance of said interlocutory injunction are as follows:

On May 29, 1925, the Board of Railroad Commissioners of the State of North Dakota upon its own motion instituted a proceeding before that Commission known as case No. 2255 for the purpose of determining to what extent, if any, the North Dakota intrastate rates for transportation of freight might be unjust, unreasonable, unjustly discriminatory or unduly preferential. Hearings were had and on September 2, 1927, it appearing that the Interstate Commerce Commission was conducting a class rate investigation, being a part of Rate Structure Investigation, Docket 17,000, the State Commission held its record open for further hearing. (R. 17) On January 28, 1928, the State Commission reopened case No. 2255, insofar as it related to class rates and certain other rates, and set that proceeding down for hearing in connection with a hearing in its suspension proceeding, case No. 2875. On May 8, 1929, the State Commission issued the order which is the occasion of the present controversy, (R. 15) which order prescribed the things about which the appellees complain, namely:

> "3. That for the future, between all jobbing or distributing points, including Bismarck, Carrington, Devils Lake, Dickinson, Drake, Fairmount, Fargo, Grand Forks, Jamestown, Mandan, Max, Minot, New Rockford, Oakes, Valley City, Wahpeton and Williston, also between such points on the one hand and all other points on the other hand, reasonable and non-discriminatory single line class rates shall not be in excess of 90% of the current single line general distance class rates.

Joint rates shall be made by the addition of the following arbitraries in cents per 100 lbs.:

Classes	1	2	3	4	5	A	B	C	D	E
Arbitraries	8	7	6	5	3	3	3	2	2	1.

5. That the jobbing scales prescribed herein shall be applied concurrently from and to all jobbing points.

8. That all rates prescribed herein shall be the maximum at directly intermediate points. A longer line or longer lines may meet the rates of the shorter line or shorter lines, but shall observe such rates as maximum at intermediate points." (R. 20 and 21)

By supplemental orders, the effective date of the order of May 8, 1929, was finally fixed at July 12, 1929.

On June 25, 1929, the appellees filed a Bill of Complaint (R. 1) in the District Court of the United States for the District of North Dakota in which the then plaintiffs and now appellees sought to enjoin the appellants from putting into effect "said order of May 8, 1929, insofar as it relates to the establishment of a jobbing or distributing scale of class rates". (R. 13) and further asking.

"That an interlocutory injunction be issued restraining the defendants, and each of them, as prayed, during the pendency of this action; and that a temporary restraining order be issued restraining the defendants, and each of them, until the hearing and determination of the application for an interlocutory injunction." (R. 14)

The appellees also asked for an interlocutory injunction. The motion for the interlocutory injunction was heard on July 2, 1929, before Hon. A. K. Gardner, Circuit Judge, and Hon. Andrew Miller and Hon. John B. Sanborn, District Judges, sitting pursuant to paragraph 383, Title 28, U. S. C. A. The appellants resisted the application for an interlocutory injunction and filed their answer (R. 38) and presented in support thereof affidavit of Neal E. Williams, Traffic Expert of Fargo, North Dakota, (R. 52) affidavit of T. A. Durrant, Traffic Expert of Grand Forks, North Dakota, (R. 58) affidavit of G. M. Springer, Traffic Expert of Jamestown, North Dakota, (R. 76) and affidavit of E. M. Hendricks, Traffic Expert and Advisor

of the State Commission. (R. 51) The appellees presented the affidavits of James G. Morrison (R. 78) and P. B. Beidelman. (R. 83) in rebuttal.

The Court heard arguments of counsel, took the matter under advisement, and on July 6, 1929, issued its decision, (R. 84) and on July 9, 1929, issued its interlocutory injunction (R. 88) in the following terms:

> "The motion of plaintiffs for an interlocutory injunction in this case having come on regularly to be heard on the 2nd day of July, 1929, by the Honorable A. K. Gardner, Circuit Judge, and the Honorable Andrew Miller and the Honorable John B. Sanborn, District Judges, in the Federal Court Room in the City of St. Paul, Minnesota; and it appearing that five days' notice of said hearing has been duly given to the Governor and the Attorney General of the state of North Dakota and to the defendants in this case, as provided by law, and that the plaintiffs and defendants have filed a stipulation in writing that said motion may be heard at the City of St. Paul, Minnesota; and the Court having heard the arguments of counsel for plaintiffs and defendants and being fully advised in the premises,
>
> And it appearing to the satisfaction of the Court that the establishment of the scale of distributing or jobbing class rates required by the order of May 8, 1929, of the Board of Railroad Commissioners of North Dakota in Case No. 2255 and Case No. 2875, will result in rates substantially below the interstate class rates applying to and from North Dakota for similar services; that there are now proceedings pending before the Interstate Commerce Commission in which the plaintiffs herein and the defendant board have participated and in which said Interstate Commerce Commission will determine whether the disparities between said interstate rates and the intrastate rates required by said order of May 8, 1929, result in an unjust discrimination against and burden upon interstate commerce in violation of Section 13 of the Interstate Commerce Act; that if the plaintiffs are required to establish the intrastate rates required by said order to be made effective July 12, 1929, and if the Interstate Commerce Commission later determines in said proceedings that said reduced intrastate rates are unreasonably low and that their establishment and collection results in such unjust discrimination against interstate commerce plaintiffs will suffer large revenue

losses prior to such determination by the Interstate Commerce Commission and will be irreparably damaged and an unlawful burden will be placed on interstate commerce; that if said order is enjoined until the Interstate Commerce Commission determines said questions such irreparable damage will be avoided, and shippers and receivers of traffic moving on North Dakota intrastate class rates subsequent to July 12, 1929, will be in position to recover the difference between the present rates and those prescribed in said order if the Interstate Commerce Commission later determines that the distributing or jobbing rates required by said order of May 8, 1929, do not result in unjust discrimination against interstate commerce; that unless said intrastate rates are enjoined plaintiffs have no plain, adequate or complete remedy at law; and that if said order is not complied with plaintiffs will be subjected to numerous proceedings and prosecutions both for equitable and mandatory relief and to a multiplicity of penalties and fines, although the Interstate Commerce Commission shall later determine that said intrastate rates result in an unjust discrimination against interstate commerce;

It is therefore hereby ordered that the said Board of Railroad Commissioners of the State of North Dakota, and C. W. McDonnell, Fay Harding and Ben C. Larkin as members of said Board, and James Morris as Attorney General of the State of North Dakota, and their successors in office and their servants, employes, agents and all persons acting under the control or authority of any and all of said defendants, be, and each of them hereby is, enjoined and restrained from putting into effect or enforcing, or attempting to put into effect or to enforce, the scale of distributing or jobbing class rates prescribed by the order of May 8, 1929, of the Board of Railroad Commissioners of the State of North Dakota in Case No. 2255 and Case No. 2875, and from instituting any action or proceeding of any sort whatsoever to enforce said scale of distributing or jobbing class rates or to hinder or obstruct the charging or collecting by plaintiffs of the existing scale of class rates for transportation between points in the State of North Dakota, and from instituting any proceeding to subject plaintiffs to any penalties for failure to comply with the said provisions of said order of May 8, 1929, and from ordering, seeking, aiding or abetting in any manner whatever any person to commit any or either of the acts aforesaid.

And it is further hereby ordered that the said defendants, and each of them, are so enjoined and restrained

until the Interstate Commerce Commission has determined, either in its Docket 17,000, Part 2, now pending for decision, or in the proceeding under Section 13 of the Interstate Commerce Act which the plaintiffs herein have petitioned the Interstate Commerce Commission to institute, the question of whether the establishment and collection of the intrastate distributing or jobbing scale of class rates prescribed in said order of May 8, 1929, causes any undue or unlawful advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or in undue, unreasonable, or unjust discrimination against interstate or foreign commerce, and until the further order of this Court.

And it is further ordered that a copy hereof be served upon each of the defendants and that from and after the date of service each and all of said defendants shall observe and comply herewith.

And it is further ordered that this interlocutory injunction shall become effective upon the filing of bonds in the aggregate amount of $150,000.00 in favor of the United States of America, for the benefit of those affected by the injunction, as follows, to-wit:

By the Great Northern Railway Company in the penal sum of Forty-five Thousand Dollars ($45,000.00);

By the Northern Pacific Railway Company in the penal sum of Forty-five Thousand Dollars ($45,000.00);

By the Minneapolis, St. Paul & Sault Ste. Marie Railway Company in the penal sum of Thirty Thousand Dollars ($30,000.00);

By the Chicago, Milwaukee, St. Paul & Pacific Railroad Company in the penal sum of Twenty Thousand Dollars ($20,000.00);

By the Farmers Grain and Shipping Company in the penal sum of Ten Thousand Dollars ($10,000.00);
such bonds to be conditioned that, if it shall be determined that the rates fixed by the order of May 8, 1929, were lawful rates, said plaintiffs will make refunds of the difference between what intrastate shippers have been required to pay and what they would have paid if an injunction had not been granted.

Dated this 9th day of July, 1929.

Archibald K. Gardner, U. S. Circuit Judge. Andrew Miller, U. S. District Judge. John B. Sanborn, U. S. District Judge."

The Board of Railroad Commissioners of the State of North Dakota is by Section 4729, Compiled Laws N. D. 1913, vested with the following power:

"The board of railroad commissioners shall have power to prescribe just and reasonable classifications of freight and to fix and prescribe just and reasonable schedules of charges for the transportation of intrastate freight and intrastate passengers, for sleeping car accommodations, for goods and all matter of every kind carried by express companies within this state, for the transmission of messages by telegraph and telephone companies and for the use of telephone lines within the state. The commissioners shall also have the power to make just and reasonable regulations for the apportionment of all such charges between two or more companies jointly engaged in the transportation of freight, passengers, express matter, telegraph or telephone messages and it shall be the duty of said commissioners to prepare such schedules and classifications; and said schedules so made by said commissioners shall in all suits brought against any such railroad, railroad corporation or common carriers, wherein is in any way involved the charges of any such railroad, railroad corporation or common carriers, for the transportation of any passenger, freight property or cars or unjust discrimination in relation thereto, be deemed and taken in all courts of this state as prima facie evidence that the rates therein fixed are reasonable and just maximum rates or charges for the transportation of passengers, freight, property and cars upon railroads or the transmission of messages by telephone or telegraph for which said schedules may have been respectively prepared. Said commissioners shall from time to time, but not oftener than once in six months, unless upon appeal from the order fixing such rate the court should modify or reverse such order, and then only to the extent made necessary by such modification or reversal, change and revise said schedules. When any schedule shall have been made or revised as aforesaid, it shall be the duty of said commissioners to forthwith serve a copy of said schedule upon such railroad, railroad corporation or common carrier affected thereby and a notice stating when such schedule shall go into effect, and to cause notice thereof to be published for two successive weeks in one public newspaper published in each judicial district in this state which notice shall state the fact that a new schedule has been made and the date of the taking effect of said schedule; and said schedule shall take ef-

fect at the time so stated in such notice and a printed copy of said revised schedule shall be conspicuously posted by such railroad, railroad corporation or common carrier in each freight, express or receiving office and passenger depot upon its line or lines. All such schedules, so made, shall be received and held in all such suits as prima facie the schedule of said commissioners without further proof than the production of the schedule desired to be used as evidence, with a certificate of said commissioners of railroads, that the same is a true copy of the schedule prepared by them for the railroad, railroad corporation or common carrier therein named, and that notice of the making of the same has been published as required by law, provided, that before finally fixing and deciding what the original maximum rates and classifications shall be, it shall be the duty of the commissioners of railroads to cause notice of such meeting to be given each common carrier affected thereby by mailing a notice thereof addressed to the managing officer thereof at the address given in the last report of such common carrier to the secretary of state, or to such address as may have been given to and filed with said commission, at least thirty days before the date of said hearing, and to publish ten days' notice in two daily papers published in the state setting forth in such notice that at a certain time and place they will proceed to fix and determine such maximum rates and classifications; and they shall at such time and place and as soon as practicable afford to any person, firm, corporation, railroad, railroad corporation or common carrier who may desire it, an opportunity to make an explanation or showing or to furnish information to said commissioners on the subject of determining and fixing such maximum rates, fares and classifications; and a schedule of rates, fares and classifications of freights or property on all lines of railroad, railroad corporations or common carriers, subject to this article in North Dakota shall be fixed within sixty days from the taking effect of this article."

SPECIFICATION OF ERRORS

I.

The Court erred in finding and deciding that the enforcement of the order of the Board of Railroad Commissioners of the State of North Dakota dated May 8, 1929, will result in rates substantially below interstate class rates applying to and from North Dakota for similar services.

II.

The Court erred in finding and deciding that the plaintiffs will be irreparably damaged by the enforcement of the defendant, Board of Railroad Commissioners' Order of May 8, 1929.

III.

The Court erred in finding and deciding that there are now pending before the Interstate Commerce Commission proceedings in which the plaintiffs herein and the defendant, Board of Railroad Commissioners, have participated in which said Interstate Commerce Commission will determine whether the disparities between said interstate rates and the intrastate rates required by said order of May 8, 1929, result in an unjust discrimination against and burden upon interstate commerce in violation of Section (fols. 114-117) of the Interstate Commerce Act.

IV.

That the Court erred in finding and deciding that the enforcement of said order of May 8, 1929, will or might result in an unlawful burden upon interstate commerce.

V.

That the Court erred in finding and deciding that unless said intrastate rates, as fixed by said order of May 8, 1929, are enjoined, the plaintiffs have no plain, adequate or complete remedy at law.

VI.

That the Court erred in finding and deciding that if said order of May 8, 1929, is not complied with, the plaintiffs will be subjected to numerous proceedings and prosecutions both for equitable and mandatory relief and to a multiplicity of penalties and fines, although the Interstate Commerce Commission shall later determine that said intrastate rates shall result in an unjust discrimination against interstate commerce.

VII.

That the Court erred in enjoining and restraining the defendants and appellants until the Interstate Commerce Com-

mission has made a determination, either in its Docket 17,000, Part 2, now pending for decision, or in the proceedings under Section 13 of the Interstate Commerce Act, or until the further order of the Court.

VIII.

That the Decree granting said interlocutory injunction is contrary to law.

ARGUMENT

SUMMARY OF POINTS ARGUED

The following summary of points relied upon and to be argued herein are the same as set forth on page 95 of the record, but the same are here presented in different order from that in which they are there set forth:

I.

The pendency of a proceeding before the Interstate Commerce Commission under the Hoch-Smith Resolution known as Docket 17,000, Part 2, is not ground for and does not give the Court jurisdiction to grant an interlocutory injunction.

II.

The pendency before the Interstate Commerce Commission of a proceeding under Section 13 of the Interstate Commerce Act involving the order of the Board of Railroad Commissioners of May 8, 1929, is not ground for an injunction and does not give the Court jurisdiction to grant an interlocutory injunction.

III.

The discretion of the Board of Railroad Commissioners in fixing intrastate rates should not be interfered with by the Courts in the absence of a finding by the Interstate Commerce Commission to the effect that such intrastate rates cast a discriminatory burden upon interstate commerce or discriminate against persons or places engaged in interstate commerce.

IV.

The order of the Railroad Commission of the State of North Dakota dated May 8, 1929, will not result in an unlawful burden upon interstate commerce.

V.

The plaintiffs had at the time of the commencement of this action a plain, adequate and complete remedy at law in the Courts of the State of North Dakota.

I.

THE PENDENCY OF A PROCEEDING BEFORE THE INTERSTATE COMMERCE COMMISSION UNDER THE HOCH-SMITH RESOLUTION KNOWN AS DOCKET 17,000, PART 2, IS NOT GROUND FOR AND DOES NOT GIVE THE

COURT JURISDICTION TO GRANT AN INTERLOCUTORY INJUNCTION.

It is not denied that the Board of Railroad Commissioners of North Dakota has been vested with power, under the laws of that State, to prescribe the rates enforcement of which has been enjoined in this proceeding. The defendant carriers, plaintiffs below, sought the injunction upon the ground (among others) that a certain proceeding known as **Rate Structure Investigation, No. 17,000**, is now pending before the Interstate Commerce Commission ,wherein the relationship of the interstate class rates in North Dakota to intrastate class rates is involved. And the court below granted the injunction upon that sole ground. Upon this point the court said:

> "The position of the defendants is not unreasonable. It is evident, from the recitals in the order of the State Board, that the length of time consumed by the Interstate Commerce Commission in reaching a decision in Docket No. 17,000, has, in the opinion of the State Board, resulted in a denial of justice with respect to the rates in question, and that jobbers at certain jobbing points in the State are believed to be unduly prejudiced because of alleged disparity between intrastate class rates and interstate class rates from outside jobbing points, and that it was in an endeavor to do away with the discrimination believed to exist that the order of May 8th was made. It is conceded—as, of course, it must be—that this court has no power to determine the question as to whether the rates fixed by the order of May 8th do or do not discriminate against interstate commerce, or whether they do or do not create an undue disparity between intrastate and interstate rates. That question is before the Interstate Commerce Commission and it alone has jurisdiction to determine it. It may find that the State Board was well within its rights in doing what was done, or it may find to the contrary. We think, however, in view of the pendency of Docket No. 17,000, that the orderly (fol. 107) and logical way to have the question finally settled is to permit the Interstate Commerce Commission to complete that investigation and file its decision before there shall be an attempt to adjust intrastate class rates even to the extent attempted by the order of May 8th. Such rates, if they prove temporary merely—as the plaintiffs contend they will—will only briefly afford the relief sought and may

ultimately prove more of a disadvantage than otherwise to those for whose benefit they are intended, while at the same time they may cause a substantial loss to the carriers and an undue burden upon interstate commerce. On the other hand, if the rates are lawful—as the defendants claim—and are enjoined, their effectiveness cannot long he postponed in any event, and, to a considerable extent, the injury done by staying their effectiveness can be mitigated by requiring the railroads to make reparation in case it is found that they do not encroach upon interstate commerce and that the State Board was within its rights in fixing them.

We do not pass upon the question as to whether the mere fact that a controversy exists between a carrier and a state rate-making body as to the validity of an intrastate rate alleged to discriminate against interstate commerce, justifies an injunction such as prayed for here, or whether a carrier may, by commencing a proceeding before the Interstate Commerce Commission to test the validity of an intrastate rate under Section 13 of the Interstate Commerce Act, after an order has been made by a state commission fixing such rate, properly call for injunctive relief. Our opinion is, however, that, under the circumstances of this case, this Court can and should for the purpose of preserving the status quo until such time as the Interstate Commerce Commission may complete its investigation and file its decision in Docket No. 17,000, grant an interlocutory injunction restraining the defendants from putting into effect (fol. 108) the order of May 8, 1929, upon the plaintiff's furnishing a bond. ***

If, for any reason, the Interstate Commerce Commission should fail or refuse to decide whether the rates fixed by the order of May 8, 1929, are violative of Section 13 of the Interstate Commerce Act, or to make findings or reach a decision from which that question may be fairly determined, or shall hereafter unreasonably delay determination of that question, the defendants may move for a vacation of the injunction."

It will be seen that the court explicitly recognized the rule, heretofore clearly laid down by this court, in cases hereinafter to be cited, that the question whether rates prescribed by state authority cause undue discrimination against interstate commerce is a question for the preliminary determination of the Interstate Commerce Commission, and not for the courts. But

because of the pendency of No. 17,000, the court enjoined the enforcement of intrastate rates which had been prescribed by state authority in accordance with state law. This was beyond the jurisdiction of the court.

The federal government must derive from the Constitution any power which it may have to interfere with the states in the regulation of their internal commerce. It has been clearly established by decisions of this court that the only limitations upon state power to regulate intrastate rates are these: (1) A state may not prescribe rates which are so low as to amount to a taking of property without just compensation, in violation of the Fourteenth Amendment; and (2) Rates which have been prescribed by state authority must yield to the superior authority of the federal government exerted under the Commerce Clause of the Constitution for the protection of interstate commerce.

The Fourteenth Amendment is self-acting. It requires no legislation to carry it into effect. The Amendment itself provides that "No State shall *** deprive any person of life, liberty, or property, without due process of law." A state statute or other law, such as a rate prescribed by state authority, is ineffective if it will operate to cause confiscation; and the courts have jurisdiction to determine that question in a suit brought to enjoin its enforcement.

The Commerce Clause, however, while it inhibits state action which would place a direct burden upon interstate commerce, as respects the internal commerce of the states, has no other effect than to empower the Congress to legislate, in so far as may be necessary for the effective regulation of interstate and foreign commerce. Under this clause the federal courts have no jurisdiction, as respects intrastate rates, except for the enforcement of some act of Congress. Such rates, lawfully prescribed, may be affected only in the manner and to the extent that Congress by legislation, for the proper protection of interstate commerce, has provided.

The pendency of No. 17,000, therefore, gives to the federal courts no power to enjoin the enforcement of intrastate rates unless, in the exercise of the power derived from the Commerce Clause, Congress has granted to the court jurisdiction, upon the institution of a proceeding such as No. 17,000, to enjoin state action pending the termination of the Commission's inquiry, and the announcement of its decision. No such grant of jurisdiction has been attempted by the Congress.

Rate Structure Investigation, No. 17,000, is a proceeding of investigation which was directed by Public Resolution No. 46, 68th Congress, commonly called the Hoch-Smith Resolution. That resolution is set forth in full in the Commission's order instituting the No. 17,000 proceeding, which is as follows:

"ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 12th day of March, A. D. 1925.

No. 17,000

RATE STRUCTURE INVESTIGATION

In the Matter of Adjustments in the Rate Structure of Common Carriers Subject to the Interstate Commerce Act, and the Fixing of Rates and Charges

It appearing, That by joint resolution of the Congress approved January 30, 1925, the commission is authorized and directed to make a thorough investigation of the rate structure of common carriers subject to the interstate commerce act, as follows:

(Public Resolution—No. 46—68th Congress)

(S. J. Res. 107)

Joint Resolution Directing the Interstate Commerce Commission to take action relative to adjustments in the rate structure of common carriers subject to the Interstate Commerce Act, and the fixing of rates and charges.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That it is hereby declared to be the true policy in rate making to be pursued by the Interstate Com-

merce Commission in adjusting freight rates, that the conditions which at any given time prevail in our several industries should be considered in so far as it is legally possible to do so, to the end that commodities may freely move.

That the Interstate Commerce Commission is authorized and directed to make a thorough investigation of the rate structure of common carriers subject to the interstate commerce act, in order to determine to what extent and in what manner existing rates and charges may be unjust, unreasonable, unjustly discriminatory, or unduly preferential, thereby imposing undue burdens, or giving undue advantage as between the various localities and parts of the country, the various classes of traffic, and the various classes and kinds of commodities, and to make, in accordance with law, such changes, adjustments, and redistribution of rates and charges as may be found necessary to correct any defects so found to exist. In making any such change, adjustment, or redistribution the commission shall give due regard, among other factors, to the general and comparative levels in market value of the various classes and kinds of commodities as indicated over a reasonable period of years to a natural and proper development of the country as a whole, and to the maintenance of an adequate system of transportation. In the progress of such investigation the commission shall, from time to time, and as expeditiously as possible, make such decisions and orders as it may find to be necessary or appropriate upon the record then made in order to place the rates upon designated classes of traffic upon a just and reasonable basis with relation to other rates. Such investigation shall be conducted with due regard to other investigations or proceedings affecting rate adjustments which may be pending before the commission.

In view of the existing depression in agriculture, the commission is hereby directed to effect with the least practicable delay such lawful changes in the rate structure of the country as will promote the freedom of movement by common carriers of the products of agriculture affected by that depression, including livestock, at the lowest possible lawful rates compatible with the maintenance of adequate transportation service: Provided, That no investigation or proceeding resulting from the adoption of this resolution shall be permitted to delay the decision of cases now pending before the commission involving rates on products of agriculture,

and that such cases shall be decided in accordance with this resolution.

Approved, January 30, 1925.

It is ordered, That an investigation of the rate structure of common carriers subject to the interstate commerce act be, and it is hereby, instituted by the commission in order to:

(a) Determine to what extent and in what manner, if any, rates, fares, and charges, and all classifications, regulations, and practices relating thereto, hereinafter for brevity collectively termed rates, of such common carriers for or in respect of the transportation or transmission by such carriers in interstate or foreign commerce of the various classes and kinds of commodities and the various classes of traffic, including freight, passenger, mail, and express, or any other, similar or dissimilar, may be unjust, unreasonable, unjustly discriminatory, unduly preferential, or otherwise in violation of any provision of law, including the joint resolution aforesaid.

(b) Determine to what extent and in what manner, if any, the rates, as above defined, of such common carriers cause undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand, and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce.

(c) Make, in accordance with law, such changes, adjustments, and redistribution of rates, as above defined, as may be found necessary to correct any defects so found to exist, and to determine to what extent, if any, and upon what classes and kinds of commodities or classes of traffic, if any, compensating increases or other changes in rates, as above defined, may and shall lawfully be required or authorized by the commission in order to offset or partially offset such reductions or other changes in rates, as above defined, on other classes or kinds of commodities or classes of traffic, giving due regard, among other factors, to—

(1) The conditions which prevail in the several industries of the country, in so far as it is legally possible to do so, to the end that commodities may freely move;

(2) The general and comparative levels in market value of the various classes and kinds of commodities as indicated over a reasonable period of years;

(3) A natural and proper development of the country as a whole;

(4) The maintenance of an adequate system of transportation;

(5) Any other requirement of law laid upon the commission in respect of the initiation, modification, establishment, or adjustment of rates, as above defined.

(d) Make in the progress of the investigation such decisions and orders as the commission may find necessary or appropriate upon the record then made in order to place the rates upon designated classes or kinds of commodities or classes of traffic upon a just and reasonable basis with relation to other rates.

(e) Effect with the least practicable delay such lawful changes in the rate structure of the country as will promote the freedom of movement by common carriers of the products of agriculture affected by the existing depression declared in said joint resolution, including livestock, at the lowest possible lawful rates compatible with the maintenance of adequate transportation service.

It is further ordered, That all common carriers subject to the interstate commerce act be, and they are hereby, made respondents to this proceeding; that this order be served upon each of said respondents; that the several States of the United States be notified of this proceeding by sending copies of this order by registered mail to the governor of each State, as well as to the tribunal thereof, if any, having regulatory jurisdiction over such common carriers; that copies of this order be sent to the heads of the executive departments of the United States; and that notice of this proceeding be given to the public by depositing a copy of this order in the office of the secretary of the commission, at Washington, D. C.

And it is further ordered, That this proceeding be assigned for hearing at such times and places as the commission may hereafter direct.

By the commission.

(SEAL) GEO. B. McGINTY,
Secretary."

In determining whether the Hoch-Smith Resolution operates to subject intrastate rates to suspension by injunction of the federal courts, in advance of a preliminary finding by the In-

terstate Commerce Commission that they are discriminatory against interstate commerce, regard must be had to the cardinal rule applicable to such construction, as laid down by this court in **Illinois Central R. R. vs. Public Utilities Commission**, 245 U. S. 492, 510 hereinafter again cited. In that case, involving passenger fares prescribed by a state statute, the court said:

> "In construing Federal statutes enacted under the power conferred by the commerce clause of the Constitution the rule is that it should never be held that Congress intends to supersede or suspend the exercise of the reserved powers of a state, even where that may be done, unless, and except so far as, its purpose to do so is clearly manifested."

It will be noted that the resolution directs the Commission to make a thorough investigation of "the rate structure of common carriers subject to the Interstate Commerce Act in order to determine to what extent and in what manner existing rates and charges may be unjust, unreasonable, unjustly discriminatory, or unduly preferential *** and to make, in accordance with law, such changes, adjustments and redistribution of rates and charges as may be found necessary to correct any defects so found to exist." And it will be further noted that the Commission's order of investigation embraces all rates, intrastate as well as interstate, of all carriers subject to the Interstate Commerce Act which are engaged in "the transportation or transmission *** in interstate or foreign commerce of the various classes and kinds of commodities and the various classes of traffic, including freight, passenger, mail and express, or any other, similar or dissimilar."

The investigation, accordingly, involves all rates for the transportation of persons or property, intrastate and interstate, of all carriers engaged in interstate or foreign commerce and subject to the Interstate Commerce Act. The resolution itself, however, lays no new injunction upon the carriers, except such as may be implied in the direction given to the Commission, in the concluding paragraph of the resolution, to effect such

lawful changes in rates as will promote the freedom of movement of the products of agriculture "at the lowest possible lawful rates compatible with the maintenance of adequate transportation service."

Rates of common carriers, whether interstate or intrastate, are to be affected, under the resolution, not directly by the resolution itself, but only through the medium of orders of the Commission, made from time to time during the progress of the investigation. Hence neither the resolution itself nor the pendency of No. 17,000, the **Rate Structure Investigation,** thereunder, can give any federal court jurisdiction over any intrastate rate. Only a decision of the Commission that such a rate is violative of federal law, and an order directing the carrier no longer to observe the same, can give a federal court jurisdiction to enjoin its enforcement.

Aside from the direction given as to the level of rates on products of agriculture, application of which is in no way involved in this case, the Hoch-Smith Resolution does not change pre-existing law. The Commission is to prosecute the investigation commanded by the resolution to determine what rates are unjust, unreasonable, unjustly discriminatory or unduly preferential, and is to make orders "in accordance with law *** to correct any defects so found to exist."

To the extent that the Commission finds that intrastate rates do constitute defects in the rate structure of carriers, either because of their ill-relationship to interstate rates, fixed upon a just and reasonable basis, or because they yield an unduly low compensation for services covered, the Commission may order the removal of such defects "in accordance with law." In other words, it may make orders for that purpose of the character and in the manner provided in the Interstate Commerce Act.

The Jurisdiction of the States over Intrastate Rates, Subject to the Power of the Interstate Commerce Commission to Remove Discrimina-

tion, is Conclusively Established by Decisions of this Court.

The Commission in the No. 17,000 proceeding is governed, both in its determination of what rates constitute defects in the rate structure of carriers, and in the making of corrective changes, by pre-existing law. Hence the jurisdiction of the federal courts with respect to intrastate rates is in no way enlarged by the Hoch-Smith Resolution; and we may determine the limitations upon such jurisdiction from the decisions of this Court rendered in cases which have heretofore arisen under the Interstate Commerce Act.

The question whether federal courts may enjoin intrastate rates upon the ground of interference with interstate commerce was most fully considered in the **Minnesota Rate Cases**, 230 U. S. 352. That case was closely similar to this, in that, as in this case, it was there claimed that the intrastate rates complained of should be enjoined as an interference with interstate commerce because, if made effective, they would dstroy a pre-existing relationship between intrastate rates and interstate rates, which had long been maintained, and because such intrastate rates would unjustly discriminate in favor of interstate shippers.

The conclusion of the trial court, upon which an injunction was rested, was stated as follows:

> "That to maintain the commodity rates for transportation wholly within Minnesota simultaneously with the interstate rates now in force would involve unjust discrimination and would seriously impair the interstate business of the companies, to avoid which it would be necessary to reduce the basis of the interstate rates to a substantial parity with that prescribed by the state law." (230 U. S. 389)

Upon appeal, this Court, after a most comprehensive review of the decisions, and after a careful analysis of the Act to Regulate Commerce, reached the conclusion that the several states retained jurisdiction to regulate rates applicable to intrastate transportation, and that the federal courts, in the absence of

Congressional legislation empowering them thereto, could not restrain enforcement of such intrastate rates upon the ground of interference with interstate commerce. Negativing the contention that the intrastate rates must be maintained on a level not below interstate rates, the Court said:

> "To say that this power (to regulate) exists, but that it may be exercised only in prescribing rates that are on an equal or higher basis than those that are fixed by the carrier for interstate transportation is to maintain the power in name while denying it in fact." (230 U. S. 417)

The immunity of intrastate commerce from regulation not provided for by Congress, in the exercise of its powers under the Commerce Clause, was recognized as follows:

> "If the situation has become such, by reason of the interblending of the interstate and intrastate operations of interstate carriers, that adequate regulation of their interstate rates cannot be maintained without imposing requirements with respect to their intrastate rates which substantially affect the former, it is for Congress to determine, within the limits of its constitutional authority over interstate commerce and its instruments the measure of the regulation it should supply." (230 U. S. 432)

> "It is the function of this court to interpret and apply the law already enacted, but not under the guise of construction to provide a more comprehensive scheme of regulation than Congress has decided upon. Nor, in the absence of Federal action, may we deny effect to the laws of the State enacted within the field which it is entitled to occupy until its authority is limited through the exertion by Congress of its paramount constitutional power." (230 U. S. 433)

It had been urged upon the Court in the **Minnesota Rate Cases** that Congress, in the third section of the Act, had prohibited carriers from giving undue or unreasonable preferences or advantages, and that this prohibition applied as well to forbid discrimination arising from intrastate rates as that arising from interstate rates exclusively. Upon this point the Court said:

> "If it be assumed that the statute should be so construed * * it would inevitably follow that the controlling principle governing the enforcement of the act should be applied to such cases as might thereby be brought within its purview; and the question whether the carrier, in such a case, was giving an undue or unreasonable preference or advantage to one locality as against another, or subjecting any locality to an undue or unreasonable prejudice or disadvantage, would be primarily for the investigation and determination of the Interstate Commerce Commission and not for the courts." (230 U. S. 419)

Later, in the Shreveport case (**Houston, E. & W. Tex, Ry vs. United States, 234** U. S. 342) this Court held that Section 3 did prevent discriminations caused by intrastate rates prescribed by state authority, and that an order of the Interstate Commerce Commission requiring the removal of discrimination found to be so caused operated to relieve carriers from obligation to observe the intrastate rates found to cause the discrimination. In the opinion in that case, however, the Court, considering the applicable provisions of the statute under which the Interstate Commerce Commission had acted, explicitly recognized the continued authority of a state over intrastate rates, in the absence of action by the Commission under the federal statute, saying:

> "Undoubtedly—in the absence of a finding by the Commission of unjust discrimination—intrastate rates were left to be fixed by the carrier, and subject to the authority of the states, or of the agencies created by the states. This was the question recently decided by this court in the Minnesota Rate Cases." (234 U. S. 357)

The question again arose in **American Express Co. v. Caldwell, 244** U. S. 617. In that case the Interstate Commerce Commission, having found that intrastate express rates in the southeastern section of South Dakota caused undue discrimination against Sioux City, Iowa, had ordered abatement of the discrimination. The Express Company attempted to raise all intrastate rates in South Dakota to the interstate level. The Supreme Court of South Dakota enjoined the raising of any in-

trastate rates. Upon appeal to the United States Supreme Court, the rule laid down in the **Shreveport case** was reaffirmed, but it was reaffirmed also that interference with the intrastate rates prescribed by state authority could go no further than necessary to remove discrimination found by the Commission. I quote from the opinion:

> "Where, as here, there is a conflict between the Federal and the state authorities, the Commission's order cannot serve as a justification for disregarding a regulation or order issued under state authority, unless, and except so far as, it is definite as to the territory or points to which it applies. For the power of the Commission is dominant only to the extent that the exercise is found by it to be necessary to remove the existing discrimination against interstate traffic." (244 U. S. 625)

In **Illinois Central Railroad v. Public Utilities Commission,** 245 U. S. 492, hereinbefore cited, which was a case wherein the plaintiff sought to enjoin the enforcement of the Illinois two-cent fare statute, the Interstate Commerce Commission had found that intrastate passenger fares in Illinois, on a basis lower than interstate rates contemporaneously in force, operated to cause undue discrimination against St. Louis and Keokuk and had ordered abatement. The order, however, was held of no effect because of its failure to designate with appropriate precision the territory or points to or from which the intrastate rates must be readjusted to remove the discrimination found. Laying down the rule of construction which we have hereinbefore quoted, the Court continued:

> "We conclude that the uncertainty in this order is such as to render it inoperative and of no effect as to the intrastate rates established and maintained under a law of the state, and therefore that the suits by the carriers were rightly dismissed on the merits." (245 U. S. 510)

The cases which we have hereinbefore cited all arose prior to the enactment of Transportation Act, 1920. However, the amendments to the Act to Regulate Commerce contained in Transportation Act, 1920, while enlarging the power of the In-

terstate Commerce Commission, both with respect to the facts which it might consider as ground for holding intrastate rates discriminatory, and as respects the manner in which it might abate discriminations found, did not withdraw intrastate rates from the primary control of the states. This question was dealt with in **C. B. & Q R. R. v. Wisconsin Railroad Commission, 257 U. S. 563.**

In that case, the Wisconsin commission, being bound by statute, had refused to permit intrastate passenger fares to be advanced to the level of interstate fares, found reasonable by the Interstate Commerce Commission in **Ex Parte 74, 58 I. C. C. 220**; and the Interstate Commerce Commission had found that the loss of revenue resulting from the lower intrastate scale required operated as a discrimination against interstate commerce generally. This discrimination the Commission ordered the carriers to abate. Thereupon the United States District Court, upon application of the carriers, enjoined the state commission and the Attorney General from taking any action to enforce the fares prescribed by state authority. In this Court the injunction was sustained. It was, however, made clear that the injunction rested upon the Commission's order, and that in the absence of such order the authority of the state would control. The Court said:

> "It is said that our conclusion gives the Commission unified control of interstate and intrastate commerce. It is only unified to the extent of maintaining efficient regulation of interstate commerce under the paramount power of Congress. It does not involve general regulation of intrastate commerce. Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce, and must leave appropriate discretion to the state authorities to deal with intrastate rates as between themselves on the general level which the Interstate Commerce Commission has found to be fair to interstate commerce.
>
> "It may well turn out that the effect of a general order in increasing all rates, like the one at bar, will, in

particular localities, reduce income instead of increasing it, by discouraging patronage. Such cases would be within the saving clause of the order herein, and make proper an application to the Interstate Commerce Commission for appropriate exception. So, too, in practice, when the state commissions shall recognize their obligation to maintain a proportionate and equitable share of the income of the carriers from intrastate rates, conference between the Interstate Commerce Commission and the state commissions may dispense with the necessity for any rigid Federal order as to the intrastate rates, and leave to the state commissions power to deal with them and increase them or reduce them in their discretion." (257 U. S. 590)

The North Dakota Commission Followed the Exact Course Outlined by this Court in the Wisconsin Passenger Fare Opinion.

The exact course which was, in the language just quoted, suggested by this Court is shown to have been followed in this case. North Dakota was one of the states which did not permit straight percentage increases in intrastate rates conforming to the **Ex Parte 74** advances in interstate rates; and such advances were made intrastate under an order of the Interstate Commerce Commission. (R. 5) Reference to the reports of the Interstate Commerce Commission (61 I. C. C. 504) will disclose the fact that this was not due to any disinclination on the part of the North Dakota Commission to permit such rates as would yield from North Dakota traffic its fair proportion of adequate carrier revenues. The causes which led to the making of the order of the Interstate Commerce Commission, covered by the report cited, are not relevant for discussion here. From this record, however, it does appear that, following the decision of this Court in the **Wisconsin Passenger Fare Case**, the North Dakota Commission recognized its obligation to maintain a proportionate and equitable share of the income of the carriers from intrastate traffic in North Dakota, and entered an order adopting intrastate rates which the Interstate Commerce Commission had prescribed. (R. 5)

While the printed record does not set forth the fact that this was done in accordance with an understanding produced "by

conference between the Interstate Commerce Commission and the state commissions", (257 U. S. 590) it may be assumed that this Court will take judicial notice of the report of the Interstate Commerce Commission to the Congress, dated December 1, 1922, wherein the following appears at page 8:

> "With the expansion of our railway systems and industrial activities Federal regulation of interstate commerce and State regulation of intrastate commerce have become more and more closely interrelated. The avoidance of harmful maladjustments of interstate and intrastate rates and fares by coordinated efforts has long been recognized as desirable, but until recently the Federal and State commissions have continued to perform their respective functions independently of one another to a large extent. This course has required of this commission the condemnation of maladjustments which injuriously discriminated against interstate commerce and frequently their correction by revision of the intrastate rates and fares. In the transportation act, 1920, the Congress enjoined active cooperation between the regulatory bodies, and authorized this commission to avail itself of the cooperation, services, records, and facilities of the State authorities in the enforcement of any provision of the interstate commerce act. The Supreme Court of the United States in Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy Railroad Company, 257 U. S. 563, decided February 27, 1922, emphasized the desirability of such cooperation.
>
> On May 3, 1922, a joint committee composed of five members of this commission and eight representatives of the State commissions, sitting at Washington, formulated and reported a tentative plan of cooperation through joint conferences and hearings, which is reproduced in Appendix H. It is to be expected that experience will suggest improvements in this plan, but its general outline embodies what is believed to be a sound working basis, and the progress already made thereunder encourages the hope of its ultimate success. The procedure outlined in the plan will, with the spirit of cooperation behind it, avoid conflict of authority and redound to the benefit of shipper, carrier, and public.
>
> In No. 13494, Southern Class Rate Investigation, and in No. 13930, Express Rates, 1922, together with other pending matters, committees representing interested State commissions are participating with us.

> The cooperative program has incidentally resulted in the making of orders by State commissions, and the consequent vacating by us of our previous orders, affecting intrastate freight rates in many of the State rate cases."

From the recitations of the carriers' bill of complaint in this case it appears that the order of the Interstate Commerce Commission prescribing intrastate rates in North Dakota was made on May 3, 1921. (R. 4) The opinion of this Court in the **Wisconsin Passenger Fare Case** was rendered February 27, 1922. The cooperative agreement between the Interstate Commerce Commission and the state commissions, as we have just seen, was effected on May 3, 1922. From the carriers' bill of complaint it further appears that on June 5, 1922, the Board of Railroad Commissioners of North Dakota made an order reciting that the order of the Interstate Commerce Commission had practically deprived the North Dakota Commission of power to regulate intrastate rates, and that appropriate action should be taken to terminate its disability. (R. 5) Said order provided that the rates established by the order of the Interstate Commerce Commission should continue in effect "until revoked, modified, or suspended by appropriate lawful proceedings before this Commission, or as otherwise provided by law." Said order also provided that a copy of the same should be served upon the Interstate Commerce Commission, "with appropriate application for the rescinding of its order." (R. 5)

Such application was made, and the Interstate Commerce Commission on July 22, 1922, entered an order of recission wherein it was recited that if an order of vacation of its order of May 3, 1921, should be entered, "the existing increased intrastate rates and charges for freight service in said state will continue in force and effect until revoked, modified, or superseded by appropriate lawful proceedings before said Board or as otherwise provided by law." (R. 6)

It thus appears that the orders made by the Interstate Commerce Commission and by the North Dakota Commission, di-

rectly following the suggestions of this Court in the **Wisconsin Passenger Fare Case**, were, as indicated in those orders, for the purpose of restoring to the state commission its power to regulate intrastate rates, so that the state commission might be left, as suggested by this Court, "to deal with them and increase them or reduce them in their discretion." 257 U. S. 590

This discretion may not be abused. The obligation of intrastate traffic "to maintain a proportionate and equitable share of the income of the carriers" must be met, and failure in this respect may lead to a resumption of control by the Interstate Commerce Commission. Until that Commission, acting in the exercise of powers delegated to it by Congress, shall find such failure, however, the discretion and power of the North Dakota Commission to deal with the rates applicable to intrastate traffic in North Dakota are full and complete.

The Exercise of Rate-Making Power by the States is in Accord with the Essential Policy of our System of Government and Indispensable to the Efficient Regulation of Carriers Under Existing Federal Law.

As was said in the **Minnesota Rate Cases opinion**, cited supra:

> "Our system of government is a practical adjustment by which the National authority as conferred by the Constitution is maintained in its full scope without unnecessary loss of local efficiency. Where the subject is peculiarly one of local concern, and from its nature belongs to the class with which the State appropriately deals in making reasonable provisions for local needs, it cannot be regarded as left to the unrestrained will of individuals because Congress has not acted, although it may have such a relation to interstate commerce as to be within the reach of the Federal power. In such case, Congress must be the judge of the necessity of Federal action. Its paramount authority always enables it to intervene at its discretion for the complete and effective government of that which has been committed to its care, and, for this purpose and to this extent, in response to a conviction of national need, to displace local laws by substituting laws of their own. The successful working of our constitutional system has thus been made possible." (230 U. S. 402)

The Interstate Commerce Act, as amended by Transportation Act, 1920, is deficient in its provision of convenient procedure for the exercise of the supervisory power over intrastate rates which, under the act as interpreted by this Court, has been devolved upon the Interstate Commerce Commission.

It is provided in paragraph (4), Section 13 of the Act, that rates prescribed by an order made under that section "shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any state or the decision or order of any state authority to the contrary notwithstanding." The order being once in force, no variation from the rates therein prescribed may be made, even though desired by shippers and carriers, and assented to by state authority. Only by reopening the proceeding before the Interstate Commerce Commission and modifying the order of that Commission can one of the prescribed rates be changed.

Under existing law the Interstate Commerce Commission has no power to deal with intrastate rates for the removal of discrimination as between such rates. It may, as to intrastate rates, act only to remove discrimination against interstate commerce. If changes in the state rate structure made by the Interstate Commerce Commission for the purpose of removing discrimination against interstate commerce produce maladjustments in the state rate structure, so that further changes are necessary to produce harmonious intrastate rates "only the state authority can produce such harmony." **(Wisconsin Passenger Fare Case,** 257, U. S. 580.)

In the **Illinois Freight Rate Case,** 60 I. C. C. 92, on January 1, 1921, the Interstate Commerce Commission, by mandatory order fixed all freight rates in Illinois. On July 7, 1921, while the first mentioned order continued in effect, in the **Illinois Coal Cases,** 62 I. C. C. 741, 743, upon complaint of Illinois coal operators that their rates, interstate and intrastate, were unreasonable, the Commission said:

> "Since intrastate rates are not subject to our jurisdiction, excepting under conditions not here present, interstate rates only will be considered." (p. 743)

Being without jurisdiction over intrastate rates except for the sole purpose of removing discrimination against interstate commerce, the federal commission is without power to reduce intrastate rates because they are so high as to operate to discriminate against intrastate commerce in favor of interstate commerce. This precise question was before the Interstate Commerce Commission, and explicitly decided by it, in **Mutual Creamery Co. v. American Express Company**, 132 I. C. C. 207, 210. The following is from the Commission's report in that case:

> "A jurisdictional question is presented by that portion of the complaint which alleges undue prejudice to and unjust discrimination against intrastate traffic, to the undue preference of interstate traffic, as above set forth, in violation of sections 3 and 13 of the act. * * * We have not hitherto in any case given the specific consideration to the question which the pending complaint calls for.
>
> Under the provisions of section 3 (1), which in their present form were part of the original act, our authority to deal indirectly with intrastate rates of an interstate carrier subject to the act for the purpose of removing undue prejudice to the interstate commerce of persons and localities has been upheld. **Houston & Texas Ry. v. United States**, 234 U. S. 342; **Ill. Cent. R. R. Co. v. Public Utilities Comm.**, 245 U. S. 493. But section 13 (4), added by the transportation act, 1920, makes specific provision with respect to interstate-intrastate rate maladjustments, and upon it the present question therefore turns. It empowers us, in cases of 'undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful,' to prescribe rates which will remove such advantage, preference, prejudice, or discrimination. Under its provisions our authority to deal directly with intrastate rates and fares in order to remove undue prejudice to or unjust discrimination against interstate commerce has been upheld.

Wisconsin R. R. Comm. v. C., B. & Q. R. R. Co., 257 U. S. 563; **New York v. United States**, 257 U. S. 591.

The cases cited are of immediate interest, for the reason that the power and duty of the States in respect of intrastate commerce, reserved to them by the Constitution and expressly excluded from our powers under the interstate commerce act, are left undisturbed. The coexisting Federal power over the relationship of interstate and intrastate rates may be exercised in direct operation upon intrastate rates only to the extent necessary for effective regulation of interstate or foreign commerce. In **Texas v. Eastern Texas R. R. Co.**, 258 U. S. 204, 217, it was said with reference to our power to authorize abandonment of intrastate operations by a railroad located entirely within a single State:

> 'If paragraphs 18, 19 and 20 (of section 1 of the act) be construed as authorizing the Commission to deal with the abandonment of such a road as to intrastate as well as interstate and foreign commerce, a serious question of their constitutional validity will be unavoidable. If they be given a more restricted construction, their validity will be undoubted. * * *
>
> Being amendments of the Interstate Commerce Act they are to be read in connection with it and with other amendments of it. As a whole these acts show that what is intended is to regulate interstate and foreign commerce and to affect intrastate commerce only as that may be incidental to the effective regulation and protection of commerce of the other class.'

The court's remarks are applicable to the provisions of section 13 (4). There is not to be imputed to Congress an intention to transcend its constitutional powers unless the section in question is not reasonably susceptible of any other interpretation, which manifestly is not the case. Only in a strained sense could it be said that the removal of undue prejudice to or unjust discrimination against interstate commerce resulting from a difference in levels of interstate commerce calls for no such action. The interstate commerce act should not be broadly construed to empower this commission to take action against rate adjustments for purposes which are primarily of intrastate concern and are not essential to the proper regulation of either interstate or foreign commerce.

Our conclusion is that an issue of undue prejudice to intrastate commerce and undue preference of interstate commerce, and of unjust discrimination against intra-

> state commerce, is not within the purview of the act we administer, and we so found. Accordingly, no consideration will be given to any of the evidence touching that issue."

The Federal Constitution and laws enacted thereunder should be construed to permit a practical adjustment as between the exercise of the dominant power of the federal government and the reserved powers of the several states without loss of efficiency of governmental action. If, however, the judgment of the court below shall be sustained it will result that intrastate shippers may be subjected to unjust and discriminatory rates without power in any governmental tribunal, federal or state, to reduce them.

If the Pendency of No. 17,000 is Ground for the Granting of this Injunction, Then no State may Regulate any Intrastate Rates While that Proceeding Remains Pending Before the Interstate Commerce Commission.

If the pendency of No. 17,000 before the Interstate Commerce Commission prevents the North Dakota Commission from regulating the rates here involved, it likewise prevents that commission from regulating any intrastate rates, and prevents every other state commission in the United States, in the same way, from regulating any intrastate rates.

This conclusion necessarily follows because No. 17,000 embraces all intrastate rates not only in North Dakota but in every other state to the same extent that it embraces the rates which are the immediate subject matter of this litigation. Accordingly, if the pendency of that case disables the North Dakota Commission from dealing with those rates, it also disables the rate-making authorities of every state from dealing with any rates.

It cannot be supposed that Congress intended to produce this situation. It would not override the accustomed powers of the states without provision of a substitute. What the court said on this point in the **Minnesota Rate Cases** opinion is as applic-

able to this case as it was to the cases then before the court. The following is quoted from that opinion:

> "Congress did not undertake to say that the intrastate rates of interstate carriers should be reasonable or to invest its administrative agency with authority to determine their reasonableness. Neither by the original act nor by its amendment, did Congress seek to establish a unified control over interstate and intrastate rates; it did not set up a standard for intrastate rates, or prescribe, or authorize the Commission to prescribe, either maximum or minimum rates for intrastate traffic. It cannot be supposed that Congress sought to accomplish by indirection that which it expressly disclaimed, or attempted to override the accustomed authority of the States without the provision of a substitute. On the contrary, the fixing of reasonable rates for intrastate transportation was left where it had been found; that is, with the States and the agencies created by the States to deal with that subject." (230 U. S. 420)

II.

THE PENDENCY BEFORE THE INTERSTATE COMMERCE COMMISSION OF A PROCEEDING UNDER SECTION 13 OF THE INTERSTATE COMMERCE ACT INVOLVING THE ORDER OF THE BOARD OF RAILROAD COMMISSIONERS OF MAY 8, 1929, IS NOT GROUND FOR INJUNCTION, AND DOES NOT GRANT THE COURT JURISDICTION TO GRANT AN INTERLOCUTORY INJUNCTION.

It would seem almost superfluous to argue that mere allegation of illegality before a tribunal established with jurisdiction to adjudicate as to legality, is not the equivalent of adjudication and judgment of illegality. If it were, then carriers might secure injunction to prevent the enforcement of any and all intrastate rates merely by filing against them a 13th Section petition with the Interstate Commerce Commission, following such application with a petition to the federal courts for the injunction.

Whether intrastate rates are or not discriminatory is a question of fact and of discretion in technical matters. It is the policy of the Congress, as expressed in the Interstate Commerce Act, to commit that question to the Interstate Com-

merce Commission for preliminary determination. This was clearly stated by this Court in **Great Northern Railroad** v. **Merchants Elevator Co.**, 259 U. S. 291, as follows:

> "Whenever a rate, rule, or practice is attacked as unreasonable or as unjustly discriminatory, there must be preliminary resort to the Commission. Sometimes this is required because the function being exercised is in its nature administrative, in contradistinction to judicial. But, ordinarily, the determining factor is not the character of the function, but the character of the controverted question and the nature of the inquiry necessary for its solution. To determine what rate, rule or practice shall be deemed reasonable for the future is a legislative or administrative function. To determine whether a shipper has in the past been wronged by the exaction of an unreasonable or discriminatory rate is a judicial function. Preliminary resort to the Commission is required alike in the two classes of cases. It is required because the inquiry is essentially one of fact and of discretion in technical matters, and uniformity can be secured only if its determination is left to the Commission. Moreover, that determination is reached ordinarily upon voluminous and conflicting evidence, for the adequate appreciation of which acquaintance with many intricate facts of transportation is indispensable; and such acquaintance is commonly to be found only in a body of experts."

It is a well settled rule, adopted for the preservation of uniformity, which it was the purpose of the Interstate Commerce Act to secure, that the courts may not exert authority over subjects which primarily come within the jurisdiction of the Commission in advance of action thereon by the Commission. **Great Northern Ry.** v. **Merchants Elevator Co.**, 259 U. S. 285, 66 L. ed. 943; **Texas & Pac. Ry. Co.** vs. **American Tie & Timber Co., Limited**, 234 U. S. 138, 58 L. ed. 1255; **Texas & P. R. Co.** vs. **Abilene Cotton Oil Co.**, 204 U. S. 426, 51 L. ed. 553; **Morrisdale Coal Co.** vs. **Pennsylvania R. Co.**, 230 U. S. 303, 57 L. ed. 1495; **Mitchell Coal & Coke Co.** vs. **Pennsylvania R. Co.**, 230 U. S. 247, 57 L. ed. 1472; **Baltimore & O. R. Co.** vs. **U. S.**, 215 U. S. 481, 54 L. ed. 293; **Director General of Railroads** vs. **Viscose Co.**, 254 U. S. 498, 65 L. ed. 373; **Northern Pacific R. Co.** v. **Solum**, 247 U. S. 477, 62 L. ed. 1221.

III.

THE DISCRETION OF THE BOARD OF RAILROAD COMMISSIONERS IN FIXING INTRASTATE RATES SHOULD NOT BE INTERFERED WITH BY THE COURTS IN THE ABSENCE OF A FINDING BY THE INTERSTATE COMMERCE COMMISSION TO THE EFFECT THAT SUCH INTRASTATE RATES CAST A DISCRIMINATORY BURDEN UPON INTERSTATE COMMERCE OR DISCRIMINATE AGAINST PERSONS OR PLACES ENGAGED IN INTERSTATE COMMERCE.

We have hereinbefore cited decisions of this Court to the effect that interference with intrastate rates prescribed by state authority, not claimed to be confiscatory, is beyond the jurisdiction of the federal courts, in the absence of a finding by the Interstate Commerce Commission that such rates create undue discrimination in violation of the Interstate Commerce Act. Unless confiscation is alleged as the basis for relief sought, the reasonableness of the rates is not in issue, except for the purpose of establishing undue discrimination. In this case confiscation is not alleged, and the statutory court expressly disclaimed finding discrimination. But in any event the record does not justify the issuance of the injunction sought to be set aside by the plaintiff's appeal.

The rates prescribed by the state commission are **prima facie** fair and valid, and this presumption cannot be destroyed by the mere fact that proceedings are pending before the Interstate Commerce Commission in an investigation instituted by it in accordance with the mandate of the Hoch-Smith Resolution or by the fact that a petition is pending before that commission under Section 13 of the Interstate Commerce Act. Even in cases of alleged confiscation it is the rule of this Court that an injunction should be granted only when evidence presented shows a reasonably clear case of confiscation. **Knoxville** vs. **Knoxville Water Co.**, 212 U. S. 1, 53 L. ed. 371; **Railroad Commission of Louisiana** vs. **Cumberland Teleph. & Teleg. Co.**, 212 U. S. 414, 53 L. ed. 577; **Phoenix Railway Co. of Arizona** vs. **Geary et al**, 239 U. S. 277, 60 L. ed. 287; **United States of America** vs.

New York Central R. Co., 272 U. S. 457, 71 L. ed. 351; Railroad Commission of Alabama vs. Central of Ga. Railway Co,. 170 Fed. 225, 95 C. C. A. 117.

The Action of the North Dakota Commission in Prescribing the Rates Here Involved Was in no Sense Arbitrary or Unreasonable.

If the reasonableness of the action taken by the North Dakota Commission were subject to review in this proceeding, it would be found that it acted only in the performance of its manifest duty. The fact that its order reduces some of the rates which were produced by the **Ex Parte 74** increases has no tendency even to show that the prescribed rates are either discriminatory or unreasonable. That the great percentage increases found necessary in **Ex Parte 74** would produce maladjustments in the rate structure which might well require to be remedied was recognized by this Court in the **Wisconsin Passenger Fare Case,** wherein it was said:

> "It may well turn out that the effect of a general order in increasing all rates, like the one at bar, will, in particular localities, reduce income instead of increasing it, by discouraging patronage." (257 U. S. 590)

The North Dakota Commission, in conformity with the admonition of this Court, has recognized its obligation to permit rates applicable to intrastate traffic in North Dakota which will yield an equitable share of needed carrier revenue. It is proceeding in strict conformity with the plan provided for by Congress in paragraph (4) of Section 13 of the Interstate Commerce Act, authorizing cooperation, and recommended by this Court in the **Wisconsin Passenger Fare Case.**

The Interstate Commerce Commission instituted the No. 17,000 investigation on March 12, 1925. The North Dakota Commission instituted a like investigation on May 9, 1929. (R. 7) The North Dakota Commission is cooperating in No. 17,000. In Part II, involving class rates, a member of the North Dakota Commission has been sitting with the Interstate Commerce Commission (R. 36). It is the intention of the

North Dakota Commission, when interstate rates shall be fixed in that proceeding, to bring the intrastate rates in North Dakota upon the same classes of traffic into harmonious relation with such interstate rates. Its reports disclose that purpose.

After the North Dakota Commission had fully investigated the intrastate rate situation it delayed action for the express purpose of awaiting the action of the Interstate Commerce Commission. (See recital of carriers' bill September 2, 1927. R. 7) It was not till May 8, 1929, more than four years after the Interstate Commerce Commission investigation had been ordered in No. 17,000, and one year and eight months after the order of postponement just mentioned, that the North Dakota Commission acted, and made the reductions found by it necessary to relieve intrastate shippers in North Dakota from unjust and discriminatory rates. And then, in making its order, the commission expressly provided:

> "That all of these findings of fact and conclusions are without prejudice to different conclusions which may be reached in the cooperative proceedings now pending jointly before the Interstate Commerce Commission and western state Railroad Commissions." (R. 20)

If the rates ordered reduced were in fact unjustly discriminatory the North Dakota Commission was the only commission which could afford relief, and it was the duty of that commission to act. Paralysis of state governments was not designed by Congress to be produced by its grant of power to the Interstate Commerce Commission to prevent injury to interstate commerce from discriminatory rates.

The situation which faced the North Dakota Commission is well shown by the following paragraphs quoted from its report of May 8, 1929:

> "Complainants for Jamestown and other interior jobbing cities call attention to the fact that they have been trying for the past ten or twelve years to obtain some measure of relief from the much greater basis of joint line rates, which they are compelled to pay, in contrast

with the lower basis of joint rates enjoyed by Grand Forks, Fargo and Wahpeton, and urge that some definite action be taken by us in the instant cases. (R. 18)

"In our original report in Case No. 2255 we said, 'There is every indication that the class rate investigation being conducted jointly by the Interstate Commerce Commission and the respective State Commissions will be completed and a decision rendered within a reasonably short time,' and 'We are not unmindful of the fact that shippers and carriers have gone to considerable expense in preparing exhibits and submitting their case before us. The record with respect to class rates will accordingly be held open for further hearing in connection with Case No. 2255, Sub. 2, after the Interstate Case is decided.'

"To date the Interstate Commerce Commission, due to the thousands of pages of transcript, hundreds of exhibits, together with the tremendous scope of the investigation has been unable to render a tentative report which, as a matter of course, must be followed by briefs and lengthy oral argument. It therefore appears to us that the prayer of the shippers for relief, which has already been pending for years should not be further delayed in the hope that their problems might be solved or partially solved at some indefinite date in the future." (R. 17)

Nothing except impotency to act would excuse non-action on the state commission's part under the circumstances found. In any event, whether the commission should act or continue longer to await decision by the Interstate Commerce Commission was a matter for its discretion. It certainly has not exercised that discretion arbitrarily. In its report of September 2, 1927, (R. 7) it reduced certain intrastate freight rates, but then postponed action on class rates because an early decision from the Interstate Commerce Commission as to class rates was then expected. The intention of the North Dakota Commission then was and now is, as both that report and the report of May 8, 1929, show, to establish intrastate rates in harmony with interstate rates. The intrastate class rates now in force do not harmonize with the existing interstate rates. The order of May 8, 1929, was designed to remove existing discriminations against intrastate shippers. If such new interstate class rates as may finally be promulgated and established as the result of

the proceedings in No. 17,000 shall be out of harmony with the intrastate rates prescribed by the state commission order of May 8, 1929, the intrastate rates will be readjusted.

The opinion of the court below suggests that the rates prescribed by the state commission's order "if they prove temporary merely—as the plaintiffs (carriers) contend they will—will only briefly afford the relief sought and may ultimately prove more of a disadvantage than otherwise to those for whose benefit they are intended."

With the utmost respect for the learned court from which the opinion came, it should be observed that the state commission, to which by law the regulation of carriers and carrier rates, as respects intrastate commerce, is especially committed, which is working in close cooperation with the Interstate Commerce Commission in the hearing and consideration of No. 17,000, is much better qualified, and in a much better position, to judge of the probable length of time that will elapse before interstate class rates will be promulgated as a result of those proceedings—with which interstate rates the intrastate rates in question may be compared—and also is better qualified, and in a better position to judge whether such intrastate rates are likely to be so far out of line with interstate rates finally prescribed as to require readjustment, and, further, is better qualified to judge as to the importance to the intrastate shippers of North Dakota of receiving just and non-discriminatory rates during the period which will intervene before interstate rates will be promulgated in No. 17,000.

In this connection—while it is somewhat beside the point—it is interesting to note that while the carriers represented to the court below that a decision concerning class rates in No. 17,000 might be expected in 1929 (R. 7) no such decision has been rendered which can be cited to this Court.

That the action of the state commission was not precipitate is conceded in the opinion of the court below, and that court

expressly disclaimed any finding that the rates prescribed will cause unjust discrimination, or that there is any undue disparity between those rates and the intrastate rates. On this point the court said:

> "The position of the defendants (the state commission) is not unreasonable. It is evident, from the recitals in the order of the State Board, that the length of time consumed by the Interstate Commerce Commission in reaching a decision in Docket No. 17,000, has, in the opinion of the State Board, resulted in a denial of justice with respect to the rates in question, and that jobbers at certain jobbing points in the State are believed to be unduly prejudiced because of alleged disparity between intrastate class rates and interstate class rates from outside jobbing points, and that it was in an endeavor to do away with the discrimination believed to exist that the order of May 8th was made. It is conceded—as, of course, it must be—that this court has no power to determine the question as to whether the rates fixed by the order of May 8th do or do not discriminate against interstate commerce, or whether they do or do not create an undue disparity between intrastate and interstate rates. That question is before the Interstate Commerce Commission and it alone has jurisdiction to determine it. It may find that the State Board was well within its rights in doing what was done, or it may find to the contrary." (R. 86)

The Injunction in This Case Was Granted in Disregard of the Provisions of Section 19 of the Act of October 15, 1914.

Apparently the court below is of the opinion that the state commission is not absolutely without jurisdiction. It is not obliged to await Interstate Commerce Commission action indefinitely. It must wait only so long as the court thinks reasonable. In its opinion, the court said:

> "If, for any reason, the Interstate Commerce Commission should fail or refuse to decide whether the rates fixed by the order of May 8, 1929, are violative of Section 13 of the Interstate Commerce Act, or to make findings or reach a decision from which that question may be fairly determined, or shall hereafter unreasonably delay determination of that question, the defendants may move for a vacation of the injunction."

It thus appears that rates prescribed by the law of North Dakota have been enjoined without a finding by any tribunal that those rates are in any respect unconstitutional.

Section 19 of the Act of October 15, 1914, chap. 323, 38 Stat. at L. 730, 738, U. S. C. Title 28, Sec. 383, provides "That every order for an injunction shall set forth the reasons for the issuance of the same."

The intent and purpose of this statute may have been twofold: First, to compel the court to an examination of the legal grounds for the injunction before the same shall be issued, and second, to facilitate a review of the legality of the injunction upon appeal.

In this case no legal reasons for issuing the injunction are set forth in the opinion. The reasons which are set forth, to the extent that they have any relation to the rates affected by the injunction, may be summarily stated as follows:

(1) That such rates would be substantially below interstate class rates applied to and from North Dakota for similar services. If this be true, it does not show the rates to be unconstitutional.

It is not claimed that they are confiscatory, and whether there is such disparity as to create undue discrimination is a question the decision of which is essentially one of fact and of discretion in technical matters, which in accordance with the plan of Congress, is to be made in the first instance by the Interstate Commerce Commission. The court in its opinion expressly disclaimed any finding of discrimination.

(2) That there is now pending before the Interstate Commerce Commission a proceeding in which the Interstate Commerce Commission will determine whether the rates enjoined do or not cause unjust discrimination against interstate commerce.

The fact that a proceeding to test the validity of rates has been instituted before the Interstate Commerce Commission certainly does not show that the rates in question are unlawful.

(3) That if the rates enjoined were made effective, and if they should later by the Interstate Commerce Commission be found unreasonably low, and hence unjustly discriminatory against interstate commerce, the carriers would from their establishment and collection suffer irreparable damage and an unlawful burden would be placed on interstate commerce.

This finding amounts to nothing as the basis for the issuance of an injunction. It is not a finding by the court that the carriers will suffer irreparable damage from the establishment of the rates, but only a finding that they will suffer such damage,if the rates prescribed by the state commission are in fact unreasonable and unlawfully low—as to which any finding is, in the opinion, expressly disclaimed.

There are no other findings which in any way relate to the rates enjoined, or which constitute legal reason for the granting of the injunction. The intent of the statute requiring a statement of reasons, of course, was that good and sufficient reasons in law should be stated. No such reasons are stated in this injunction. It was, accordingly, granted in disregard of the statute.

The injunction was also granted in disregard of the plain admonition of this court in **Lawrence v. St. Louis-San Francisco Railway**, 274 U. S. 588, 591, 594. In that case the plaintiff had obtained from the District Court an injunction restraining action to compel the carrier involved to make application to the Oklahoma Corporation Commission before abandoning the operation of certain railroad shops. Upon appeal to this court the injunction was set aside, the Court saying:

> "The decree disregards the requirement of Sec. 19 of the Act of October 15, 1914, chap. 323, 38 Stat. at L. 730, 738, U. S. C. title 28, Sec. 383, 'that every order for an injunction shall set forth the reasons for the issuance of

the same, shall be specific in terms . . .' It does not declare that the Oklamoha statute is unconstitutional; nor does it state any other reason why the action enjoined is a violation of plaintiff's rights. It does not recite, even in general terms, that there is danger of irreparable loss. ***

"We have no occasion to determine whether the Oklahoma act is obnoxious to the Federal Constitution. But as bearing upon the propriety of issuing the temporary injunction, the fact is important that the controversy concerns the respective powers of the nation and of the states over railroads engaged in interstate commerce. Such railroads are subject to regulation by both the state and the United States. The delimitation of the respective powers of the two governments requires often nice adjustments. The federal power is paramount. But public interest demands that whenever possible conflict between the two authorities and irritation be avoided. To this end it is important that the federal power be not exerted unnecessarily, hastily, or harshly. It is important also that the demands of comity and courtesy, as well as of the law, be deferred to."

The Requirement of a Bond Neither Cures the Illegality of the Injunction Nor Adequately Protects the Public from Injury Thereby.

If the court below was without jurisdiction to entertain the carriers' application for an injunction upon the grounds and under the circumstances shown in their petition, the fact that a bond was required, which the court below thinks will "mitigate" the damage done to shippers by the injunction, does not cure the illegality of the injunction. Furthermore, such a bond is only a partial protection to the public. It may protect the large shipper, but the small shipper and the ultimate consumer are afforded very little protection by a bond, for the reason that it is not practicable for small shippers to enforce their rights thereunder, and ultimate consumers, who are not shippers, have no such rights. And ultimate consumers and small shippers are, in the aggregate, the persons most affected by rate increases, especially increases in class rates.

IV.

THE ORDER OF THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF NORTH DAKOTA DATED MAY 8, 1929, WILL NOT RESULT IN AN UNLAWFUL BURDEN UPON INTERSTATE COMMERCE.

The appellants claim that this case involves purely a question of jurisdiction. It is not a question whether the court, in a case of which it has jurisdiction, may issue an injunction pendente lite. If this were a case involving alleged confiscation we should not upon appeal question the power of the court below to grant the injunction. The question here, however, is whether the federal courts have jurisdiction to entertain in any form an application which seeks to enjoin the enforcement of intrastate rates prescribed by state authority, and not alleged to be confiscatory, merely because there is pending before the Interstate Commerce Commission a proceeding in which action may be taken which will affect the relationship of such intrastate rates to interstate rates. If, however, consideration should be given to the reasonableness of the intrastate rates, enforcement of which has been restrained by the injunction, the evidence in the record does not justify the injunction.

The affidavits presented to the lower court and made a part of this record are conflicting. We believe that an examination of these affidavits discloses that the great weight of fact presented indicates that no burden would be cast upon interstate commerce by the schedule of rates prescribed by the order of the state commission. We do not rest our contention, however, alone upon the preponderance of fact set forth in the affidavits. The Interstate Commerce Commission has taken notice of the extremely high rates of North Dakota interstate traffic that exist at the present time. In Investigation and Suspension Docket No. 3018, 144 I. C. C. 487 on page 490, the Interstate Commerce Commission said:

> "Intrastate class rates in North Dakota are higher than in the neighboring States of Minnesota, Nebraska, Iowa, and Wisconsin, and in South Dakota, east of the Missouri

River. Taking the average of the first four classes for 100 miles and letting the North Dakota rates represent 100 per cent, the percentages for the other States in the order named would be 70.1, 80, 55.6, 75.7, and 84.6 per cent. The record does not show what the relationship would be to the rates in the remainder of South Dakota, or in Montana or Wyoming."

A mere difference in level between state and interstate rates does not warrant the interference of the Interstate Commerce Commission. **Railroad Commission of Wisconsin et al v. Chicago, Burlington & Quincy Railroad Co.**, 257 U. S. 563, 66 L. ed. 371. If a mere difference in level of rates does not warrant interference by the Interstate Commerce Commission, whose statutory duty it is to consider such matter, then much less does such a condition warrant interference by the courts on the mere possibility that the Interstate Commerce Commission might at some later time find that discrimination against interstate commerce existed.

The Interstate Commerce Commission itself has discussed this same principle in **Ohio State Rates on Sand, Gravel, etc.**, 85 I. C. C. 66, 75, wherein it is stated: "The law does not require that intrastate rates shall be maintained on the exact level of interstate rates, but only that there shall not exist between the two a disparity so substantial as to operate as a real discrimination against and obstruction of interstate commerce." (See also **Rates and Minimum Weights on Salt Within the State of Ohio**, 128 I. C. C. 499, 504.)

V.

THE PLAINTIFFS HAD AT THE TIME OF THE COMMENCEMENT OF THIS ACTION A PLAIN, ADEQUATE AND COMPLETE REMEDY AT LAW IN THE COURTS OF THE STATE OF NORTH DAKOTA.

Public Utilities Act of the State of North Dakota (Chapter 192, Session Laws N. D. 1919) provides for a judicial review upon both law and facts of all orders made by the Board of Railroad Commissioners fixing, establishing or changing rates. **State ex rel Hughes vs. Milhollan et al.**, 195 N. W. 292.

CONCLUSION

In conclusion, it may be said that while this case presents to this Court certain concrete questions of law, from the point of view of the North Dakota Commission, and of all state regulatory authorities, it presents the practical question whether the cooperative plan, contemplated by paragraph (4) of Section 13 of the Interstate Commerce Act, and brought into existence in the manner which has been set forth in this brief, shall be permitted to operate. Are the acts of state authorities—notwithstanding the full recognition by such authorities of their obligations under federal law, and notwithstanding complete cooperation by them with the Interstate Commerce Commission, through which Congress exercises its dominant power—subject to injunction by the federal courts without any adjudication by the Interstate Commerce Commission that any act done or proposed to be done by state authority will interfere in any way with federal regulation of interstate commerce, or in any manner injure such commerce?

Respectfully submitted,

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Supreme Court,
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IN THE

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October Term, 1929.

No. 364.

ARD OF RAILROAD COMMISSIONERS OF THE STATE OF NORTH DAKOTA, et al.,

Appellants,

vs.

GREAT NORTHERN RAILWAY COMPANY, et al.,

Appellees.

BRIEF FOR APPELLEES.

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BRIEF FOR APPELLEES.

STATEMENT OF THE CASE.

This is an appeal from an order granting an interlocutory injunction.

Appellants are the Board of Railroad Commissioners of the State of North Dakota and the members thereof, and the Attorney General of that state. Appellees are common carriers by railroad engaged in transporting shipments intrastate in North

Dakota and interstate to, from and through North Dakota and other states.

On July 9, 1929, upon application of appellees, the District Court of the United States for the District of North Dakota, consisting of three judges as required by Section 266 of the Judicial Code (Title 28, U. S. C., Section 380) issued an interlocutory injunction enjoining appellants from attempting to put into effect or to enforce an order of appellant Board of Railroad Commissioners of North Dakota dated May 8, 1929, prescribing a reduced scale of class rates for intrastate application in North Dakota on appellees' lines of railroad. Appellants were so enjoined only until the Interstate Commerce Commission, in proceedings then pending before it, has determined whether said reduced intrastate class rates cause unjust discrimination against interstate commerce in violation of Section 13 of the Interstate Commerce Act.

The application for the interlocutory injunction was submitted by the parties and determined by the court upon appellees' verified bill of complaint, as amended, and the affidavits of J. G. Morrison and P. B. Beidelman, and upon appellants' verified answer and the affidavits of Neal E. Williams, T. A. Durrant, G. M. Springer and E. M. Hendricks. From the order granting this injunction appellants take this appeal direct to the Supreme Court of the United States pursuant to the provisions of the section of the Judicial Code referred to above.

STATEMENT OF THE FACTS.

There is set forth below a brief statement of the facts essential to determine the questions presented on this appeal. The bill of complaint, as amended, alleges:

Prior to August 26, 1920, the same scale of class rates applied intrastate in North Dakota on appellees' lines as applied interstate on their lines between points in North Dakota, Minnesota, and South Dakota, except that from Minneapolis, St. Paul and Duluth to North Dakota points the rates were slightly lower than the North Dakota intrastate rates for corresponding distances. On August 26, 1920, the interstate class rates to, from and through North Dakota were increased 35% in some instances and 33 1/3% in others, pursuant to authority to make a general advance in all interstate rates granted to appellees by the Interstate Commerce Commission in *Ex Parte 74 (Increased Rates, 1920,* 58 I. C. C. 220) (R. 4).

Appellees applied to appellant Board of Railroad Commissioners of North Dakota for authority to make corresponding increases in the North Dakota intrastate rates, including class rates, which application was denied, thus leaving the intrastate class rates on a lower level than the interstate class rates. Subsequently in Docket 12,085 (*North Dakota Rates, Fares and Charges,* 61 I. C. C. 504), a so-called Section 13 case, the Interstate Commerce Commission on May 3, 1921, made a finding that the interstate class rates, established by appellees as a result of *Ex Parte* 74, result in reasonable rates and charges for interstate transportation and that the failure to correspondingly increase the intrastate class rates within the state of North Dakota

> "has resulted and will result in intrastate rates and charges lower than the corresponding rates and charges maintained

> on interstate traffic within the state of North Dakota, and between points in the state of North Dakota, and points in other states, in undue preference of and advantage to shippers of intrastate traffic within the state of North Dakota, in undue prejudice to shippers of interstate traffic, and in unjust discrimination against interstate commerce."

The Interstate Commerce Commission made a further finding that said undue preference and prejudice can and should be removed by making increases in the North Dakota intrastate rates, including the class rates, which will correspond with the increases theretofore made by appellees in the interstate rates under *Ex Parte 74*. An order was made to that effect and complied with. Thereupon the relationship between the North Dakota intrastate class rates and the interstate class rates which existed prior to August 26, 1920, was restored (R. 4-5).

About a year later appellant Board of Railroad Commissioners of North Dakota entered an order in the proceeding before it in which appellees were denied permission to increase the intrastate rates, reciting that the order of the Interstate Commerce Commission in the Section 13 case, Docket 12,085, "practically deprived this commission of its power to regulate intrastate rates, fares and charges of the common carriers herein involved," and that "appropriate action should be taken to terminate the disability of the State of North Dakota and the Board of Railroad Commissioners of North Dakota." After making these recitals the order provided that all the intrastate rates established by appellees herein as a result of the Interstate Commerce Commission's order in Docket 12,085 "be continued in force and effect until revoked, modified or superseded by appropriate lawful proceedings before this Commission or as otherwise provided by law" and that a copy of said order be served on the Interstate Commerce Commission "with appropri-

ate application for the rescinding of its order in Docket 12,085" (R. 5-6).

Thereafter appellant Board of Railroad Commissioners of North Dakota filed such an application with the Interstate Commerce Commission and that Commission on July 22, 1922, entered a further order in its Docket 12,085, reciting that if its order of May 3, 1921, were vacated "the existing increased intrastate rates and charges for freight service in said state will continue in force and effect until revoked, modified or superseded by appropriate lawful proceedings before said Board or as otherwise provided by law." This further order of the Interstate Commerce Commission vacated the order of May 3, 1921, insofar as it related to intrastate freight rates in North Dakota. Thereupon appellant Board of Railroad Commissioners of North Dakota regained jurisdiction over the intrastate rates to the extent permitted by law under the circumstances (R. 6).

On May 8, 1929, the North Dakota Board entered an order in a proceeding before it, instituted on its own motion, reducing the intrastate class rates. This is the order enjoined by the lower court. A copy of the order is found at pages 15 to 24 of the Record (R. 26).

This order of May 8, 1929, required, among other things, the establishment of an intrastate scale of distributing or jobbing class rates 10% lower than the existing class rates, to apply between all jobbing or distributing points in North Dakota, and to and from such distributing or jobbing points, and to apply as maxima at intermediate points. The North Dakota Board subsequently extended the effective date of this order to July 12, 1929 (R. 27).

At the time the North Dakota Board made its order of May 8, 1929, the interstate class rates resulting from *Ex Parte 74*, and the North Dakota intrastate class rates resulting from the

Interstate Commerce Commission's order in the Section 13 case, which rates were later adopted by the North Dakota Board, were still in effect, except (1) that effective July 1, 1922, both the interstate and intrastate class rates were reduced 10% as were all rates generally; and (2) that effective September 11, 1925, as a result of the Interstate Commerce Commission's findings and order in its Docket 13,839, known as the *Fargo Case*, 98 I. C. C. 691, the interstate class rates from Fargo, N. D., to points in Minnesota within a radius of 150 miles of Fargo were increased and the interstate rates from Minneapolis, St. Paul and Duluth to Fargo were increased, and to Jamestown and Valley City, N. D., were increased for some classes and reduced for others (R. 6). Because of this increase in some of the interstate rates without any change in the intrastate rates the intrastate class rates were more favorably related to the interstate class rates on May 8, 1929, than they were under the relationship which the Interstate Commerce Commission found in the Section 13 case should exist to avoid unjust discrimination against interstate commerce.

Compliance with the order of May 8, 1929, would result in a 10% reduction in the rates on 90% of the intrastate traffic which moves on class rates and would place the intrastate class rates in North Dakota more than 10% below the class rates now generally applicable interstate between Minnesota, North Dakota and South Dakota. On May 8, 1929, the interstate class rates between North Dakota and Montana were higher than the North Dakota intrastate class rates and the order of May 8, 1929, would result in making the North Dakota intrastate class rates very substantially below the interstate class rates applying between Montana and North Dakota. (For details as to the disparity which would be caused between interstate and intrastate class rates see paragraph XI of bill of com-

plaint, R. 8-10, as amplified by affidavit of J. G. Morrison, R. 78.)

The order of May 8, 1929, if complied with, would result in a very substantially more favorable relationship of intrastate class rates in North Dakota to the interstate class rates to, from and through that state than the relationship which the Interstate Commerce Commission found in the Section 13 case should exist to avoid a violation of Section 13 of the Interstate Commerce Act (R. 9-10).

Compliance with the order of May 8, 1929, will reduce the net revenues of appellees herein at least $118,000 per annum (R. 10).

Said interstate and intrastate class rates are interrelated and interdependent and the order of May 8, 1929, is violative of Section 13 of the Interstate Commerce Act which expressly forbids the establishment by state authorities of intrastate rates which cause unjust discrimination against or a burden upon interstate commerce. (For details of respects in which unjust discrimination against interstate commerce and against persons and localities will result see pp. 10 and 11 of Record.)

On March 12, 1925, the Interstate Commerce Commission instituted a proceeding before that body known as Docket 17,000, *Rate Structure Investigation*, to determine to what extent, if any, any interstate rates of any carrier in the United States subject to its jurisdiction were unjust, unreasonable, unjustly discriminatory, or unduly preferential, and to determine

> "to what extent and in what manner, if any, the rates, as above defined, of such common carriers cause undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand, and interstate or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce."

This proceeding was instituted as a result of the Hoch-Smith Resolution of Congress. (The Commission's order instituting the proceeding and the Resolution are reproduced at pages 14 to 17 of appellants' brief.)

Subsequently the Interstate Commerce Commission entered upon extended hearings in said proceeding, particularly with respect to the class rates. The relation that shall prevail between the North Dakota intrastate class rates and the interstate class rates in order to avoid a violation of Section 13 of the Interstate Commerce Act is in issue in said Docket 17,000. Appellees herein and appellant Board of Railroad Commissioners of North Dakota appeared and participated in that proceeding and introduced evidence relating to that issue, and the case was submitted to the Interstate Commerce Commission on briefs the latter part of 1928.*

Subsequent to the issuance of the order of May 8, 1929, and prior to the filing of the bill of complaint herein, appellees filed a petition with the Interstate Commerce Commission to proceed under Section 13 of the Interstate Commerce Act to determine whether or not said scale of class rates required by the order of May 8, 1929, will unjustly discriminate against persons and localities in interstate commerce or constitutes a burden on interstate commerce. The filing of such a petition by carriers is expressly authorized by Section 13 of the Interstate Commerce Act. A copy of this petition is found at page 29 *et seq.* of the Record. This proceeding under Section 13 to determine whether the rates required by the order of May 8, 1929, result in unjust discrimination against interstate commerce is pending

*Subsequent to the issuance of the interlocutory injunction in this case a proposed report was issued by the Examiners of the Interstate Commerce Commission in *Rate Structure Investigation*, Docket 17,000, Part 2, Class Rates, and the case was orally argued before the Commission on October 21-25, 1929, and has since been pending for decision.

before the Interstate Commerce Commission in addition to Docket 17,000 (R. 27-28).

In case the reduced intrastate class rates required by the order of May 8, 1929, go into effect appellees will suffer irreparable loss and injury if the reduced intrastate rates are ultimately found by the Interstate Commerce Commission to result in a violation of Section 13 of the Interstate Commerce Act and that Commission prescribes class rates for intrastate application in North Dakota which are higher than the rates required by the order of May 8, 1929 (R. 28).

The statutes of North Dakota provide a penalty for noncompliance with orders of the North Dakota Railroad Commission of not less than $500.00 nor more than $5,000.00 for each offense and also subject appellees to treble damages sustained by shippers through failure to comply with the Commission's orders. The statutes also make it the duty of the Board of Railroad Commissioners to inquire into any neglect or violation of the laws of the state of North Dakota and to enforce the laws of the state relating to railroads. The Attorney General of North Dakota is by statute made *ex officio* attorney for the Board of Railroad Commissioners and required to give it counsel and advice to carry out the provisions of any law of the state and to institute and prosecute any actions which the Board of Railroad Commissioners may deem proper and expedient (R. 2-3).

Appellants threaten to commence numerous proceedings and prosecutions both for equitable or mandatory or other relief and for a multiplicity of penalties in order to force appellees to charge and collect the scale of class rates prescribed by the order of May 8, 1929, unless appellees voluntarily file new tariffs and put such rates into effect. Said threatened proceedings would prevent appellees from obeying the mandate of

the Interstate Commerce Act against unlawful discrimination against interstate commerce. Appellees are without a plain, adequate and complete remedy at law (R. 12-13).

The prayer of the bill is for an interlocutory injunction restraining appellants from putting the order of May 8, 1929, into effect "until and only until" the Interstate Commerce Commission has determined in Docket 17,000 or in the Section 13 case pending before it, whether the reduced intrastate rates would result in a violation of Section 13 of the Interstate Commerce Act (R. 13-15).

The application for interlocutory injunction was argued before a court of three judges on July 2, 1929, was taken under advisement, and on July 8, 1929, the court rendered its decision directing that the injunction issue. This decision is found at p. 84 of the Record and is reported *Great Northern Ry. Co., et al., v. Board of Rd. Commissioners of N. D., et al.*, 33 Fed. (2nd) 934.

The injunction issued July 9, 1929 (R. 88), and enjoins appellants from putting into effect or enforcing the order of May 8, 1929,

> "until the Interstate Commerce Commission has determined, either in its Docket 17,000, Part 2, now pending for decision, or in the proceeding under Section 13 of the Interstate Commerce Act which the plaintiffs herein have petitioned the Interstate Commerce Commission to institute, the question of whether the establishment and collection of the intrastate distributing or jobbing scale of class rates prescribed in said order of May 8, 1929, causes any undue or unlawful advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or in undue, unreasonable, or unjust discrimination against interstate or foreign commerce, and until the further order of this Court."

The court required appellees to give bond for $150,000 to the United States for the benefit of those affected, conditioned that

> "if it shall be determined that the rates fixed by the order of May 8, 1929, were lawful rates, said plaintiffs will make refunds of the difference between what intrastate shippers have been required to pay and what they would have paid if an injunction had not been granted."

These bonds were filed and the injunction became operative prior to July 12, 1929, the effective date of the order of May 8, 1929, of the North Dakota Board.

The requirements of the order of May 8, 1929, with respect to rates other than distributive class rates were complied with by appellees and are not involved in this proceeding.

ARGUMENT.

A FEDERAL COURT OF EQUITY HAS POWER TO PREVENT IRREPARABLE LOSS AND DAMAGE, OR A THREATENED VIOLATION OF LAW, BY ENJOINING INTRASTATE RATES UNTIL THE INTERSTATE COMMERCE COMMISSION CAN DETERMINE IN A PENDING PROCEEDING WHETHER SUCH RATES UNJUSTLY DISCRIMINATE AGAINST INTERSTATE COMMERCE.

The above proposition is amply supported by the acts of Congress and the decisions of the courts.

A State Is Prohibited from Unjustly Discriminating Against Interstate Commerce.

Article I, Section 8, of the Constitution of the United States grants Congress the power "to regulate commerce * * * among the several states." The object of this clause was to prevent interstate commerce from being impeded or destroyed by local governments. While Congress does not possess authority to regulate the internal commerce of a state, as such, it does possess power to foster and protect interstate commerce. The use by a state of an instrument of interstate commerce in a discriminatory manner so as to inflict injury on any part of that commerce is a ground for Federal intervention. *The Shreveport case* (*Houston & Texas Ry. v. U. S.*, 234 U. S. 342).

In that case the court held that Congress by Section 3 of the Interstate Commerce Act delegated to the Interstate Commerce Commission power to prevent all discriminations against interstate commerce which Congress has the power to condemn. Since that decision Congress amended the Interstate Commerce Act by adding paragraphs (3) and (4) to Section 13 which deal specifically with unjust discrimination against interstate

commerce by states, expressly making it unlawful.* Wisconsin Passenger Fare case (*Rd. Com. of Wisconsin v. C. B. & Q. Rd. Co.*, 257 U. S. 563).

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*Paragraphs (2) and (3) of Section 13 of the Interstate Commerce Act read as follows:

"(2) Said Commission shall, in like manner and with the same authority and powers, investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission, and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this Act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

(3) Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this Act with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this Act."

The I. C. C. Has Sole Jurisdiction to Determine the Question of Unjust Discrimination Against Interstate Commerce.

This proposition is well settled. *Texas & Pac. Ry. v. Abilene Cotton Oil Co.*, 204 U. S. 426; *Houston & Texas Ry. v. U. S., supra.*

Unjust Discrimination Against Interstate Commerce by States Is Forbidden Before as Well as After the I. C. C. Determines the Existence of Such Discrimination.

Paragraph (4) of Section 13 of the Interstate Commerce Act provides that any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce resulting from rates imposed by authority of any state *"is hereby forbidden and declared to be unlawful."* This is an unconditional condemnation of unjust discrimination against interstate commerce by states. Congress by Section 13 forbade and declared unlawful such unjust discrimination at all times, *before* as well as *after* the formal finding of the Interstate Commerce Commission that such unjust discrimination exists in a particular case.*

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*Unjust discriminations in freight rates were prohibited by the common law. In *I. C. C. v. B. & O. Rd. Co.*, 145 U. S. 263, the Court said at page 275:

"Prior to the enactment of the act of February 4, 1887, to regulate commerce, commonly known as the Interstate Commerce Act, 24 Stat. 379, c. 104, railway traffic in this country was regulated by the principles of the common law applicable to common carriers, which demanded little more than that they should carry for all persons who applied, in the order in which the goods were delivered at the particular station, and that their charges for transportation should be reasonable. It was even doubted whether they were bound to make the same charge to all persons for the same service (citing cases); though the weight of authority in this country was in favor of an equality of charge to all persons for similar services."

In *Sullivan v. M. & R. R. Ry. Co.*, 142 N. W. 3 (Minn.) at page 6, the Court says:

"We are content to align ourselves with those courts which have declared that the modern common law imposes upon common carriers the duty of equality in tolls to all shippers similarly circumstanced, for the transportation of the same class of goods the same distance."

See also *Homestead Co. v. Des Moines Electric Co.*, 248 Fed. 439 (C. C. A. 8th Circuit).

The Courts Will Enforce the Prohibition Against Unjust Discrimination Against Interstate Commerce by Intrastate Rates Imposed by a State.

After a finding of unjust discrimination against interstate commerce by the Interstate Commerce Commission the courts will grant an injunction to prevent a state from continuing the unjustly discriminatory situation. The courts have a similar power to prevent unjust discrimination against interstate commerce *before* the Interstate Commerce Commission makes its formal determination of the existence of such unjust discrimination, provided the court in so doing does not attempt to determine the administrative questions committed to the sole jurisdiction of the Interstate Commerce Commission. This is so for the following reasons:

The Interstate Commerce Act Saves Common Law Remedies.

Section 22, paragraph (1) of the Interstate Commerce Act, provides:

> "and nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies."

In *Pa. Rd. v. Sonman Coal Co.*, 242 U. S. 120, the Court said in referring to the above provision:

> "Thus we have held that a manifest purpose of the provision in Section 22 is to make it plain that such 'appropriate common law or statutory remedies' as can be enforced consistently with the scheme and purpose of the act are not abrogated or displaced. *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.*, 204 U. S. 426, 446-447; that this provision is not intended to nullify other parts of the act, or to defeat rights or remedies given by earlier sections, but to preserve all existing rights not inconsistent with those which the act creates, *Pennsylvania R. R. Co. v. Puri-*

tan Coal Co., 237 U. S. 121, 129; that the act does not supersede the jurisdiction of state courts in any case, new or old, where the decision does not involve the determination of matters calling for the exercise of the administrative power and discretion of the Interstate Commerce Commission, or relate to a subject as to which the jurisdiction of the federal courts is otherwise made exclusive."

The Power to Prevent Irreparable Damage or to Enjoin a Proposed Unlawful Act Is Inherent in a Federal Court of Equity.

Section 24 of the Judicial Code, paragraph (8), (Title 28, Section 41, U. S. C.) provides that the district courts shall have original jurisdiction "of all suits and proceedings arising under any law regulating commerce."

No citation of authority is necessary for the proposition that a court of equity has the inherent power to prevent irreparable damage or to enjoin a proposed unlawful act. However, in this connection attention is called to the quotation, *infra*, from the case of *Northern Pacific Ry. Co. v. Pacific Coast Lumber Mfgrs. Assoc.*, 165 Fed. 1 (C. C. A. 9th Circuit).

In Analogous Cases Courts of Equity Have Prevented Irreparable Damage Or a Threatened Violation of Law by Holding Matters in Statu Quo Until Another Tribunal Having Jurisdiction of a Controversy Can Determine It.

In *Western Union Telegraph Co. v. L. & N. R. R. Co.*, 201 Fed. 946, affirmed by the Circuit Court of Appeals of the Sixth Circuit in 207 Fed. 1, a railroad was enjoined from interfering with the telegraph company's use of its poles and wires on the railroad right of way until pending proceedings brought by the telegraph company in a state court to condemn right of way for its lines over the railroad's property could be determined. At pages 949 and 950 of 201 Fed., it was said:

"At all events, in the peculiar conditions surrounding this case, if this court may be permitted to exercise any discretion, it will be exerted in the direction of maintaining the present status until the condemnation suit shall be finally disposed of. Indeed, this seems to us to be the course dictated alike by common sense and a proper judgment."

In *Zimmerman v. McCurdy,* 106 N. W. 125 (N. D.) it was held that where a party claims the right to possession of public land by virtue of a homestead entry against the party in possession under claim of superior right and the claims of the parties are being contested before the Federal Land Department, the courts will grant an injunction to hold the matter *in statu quo* until it is decided by the tribunal having jurisdiction thereof. At page 127 the Court said:

"The Court has no more jurisdiction to anticipate the decision of the Land Department on that question than on any other question at issue in the contest. It is, therefore, still an open question, which the court cannot yet decide, whether the plaintiff is the rightful occupant of the land or the defendant has a valid entry and the consequent right of possession. Under such circumstances an injunction is the appropriate remedy to protect the plaintiff's possession against defendant's threatened violence and maintain the status quo until the rights of the parties shall have been determined.

* * * * *

The judgment appealed from is reversed, and the district court is directed to enter a judgment for plaintiff to the effect that until the pending contest shall have been finally decided the defendant and all persons acting for or claiming under her be restrained from trespassing upon or interfering with plaintiff's possession of the land in question. * * *"

For a similar case see *Elliott v. Rich,* 172 Pac. 194 (N. M.).

In the cases cited below this principle was applied to rate cases analogous to the one at bar.

The Interstate Commerce Act was amended in 1906 to give the Interstate Commerce Commission power to determine whether interstate rates filed with the Commission by carriers were unreasonable or unjustly discriminatory and to prescribe reasonable and nondiscriminatory rates. However, it was not until the Interstate Commerce Act was amended in 1910 that the Commission was given the power to suspend tariffs filed with the Commission by carriers until the Commission could determine whether or not the proposed rates were reasonable and nondiscriminatory. During the period 1906 to 1910, when the Commission did not have the suspension power, shippers brought numerous actions in federal courts for injunctions to prevent increased interstate rates which the carriers had filed with the Commission from becoming effective until the Interstate Commerce Commission could pass on the shippers' complaints to that Commission against such rates. In the following cases it was held that such injunctions should issue where application was made *prior* to the time the proposed rates became effective:

N. P. Ry. Co. v. Pacific Coast Lumber Mfgrs. Assn., 165 Fed. 1 (C. C. A. 9th Circuit).

Union Pacific R. Co. v. O. W. Lumber Mfgrs. Assn., 165 Fed 13, (C. C. A. 9th Circuit).

Great Northern Ry. Co. v. Kalispell Lumber Co., 165 Fed. 25 (C. C. A. 9th Circuit).

Tift v. Southern Ry., 123 Fed. 789 (Circuit Court of Georgia).

Kiser Co. v. Central of Georgia Rd., 158 Fed. 193 (Circuit Court of Ga.).

Particular attention is called to the *Northern Pacific Railway Company* case, *supra*, in which the Court said at page 8:

"Upon a careful consideration of the interstate commerce act, we find no ground on which to say that it impliedly denies the equitable jurisdiction to enjoin a threatened injury such as is alleged in the bill in the present case. It is true that the courts have no power to pronounce an interstate rate unreasonable or to declare what is a reasonable rate, but this is not to say that a court of equity may not enjoin the enforcement of a threatened ruinous schedule of rates which is proposed to be adopted in the future. If such is the effect of the act, we have the anomalous situation of a threatened irreparable injury for which there is no remedy, for the Interstate Commerce Commission has no power to enjoin a proposed unreasonable new schedule of rates. *Interstate Commerce Commission v. Railway Co.*, 167 U. S. 479. To what does the reservation of legal remedies in section 22 of the act refer if not to such a remedy as this? The case calls for the exercise of a power which is inherent in a court of chancery, the power to enjoin a proposed unlawful act. The exercise of that power does not invade the province of the Interstate Commerce Commission. It prohibits the enforcement of an alleged unreasonable rate only until the commission shall have had time and opportunity to adjudge the question of its unreasonableness. To afford such relief is not to fix rates or to change existing rates, or to decide on the reasonableness of established rates, or in any way to interfere with the functions of the Interstate Commerce Commission, nor does it result in the confusion or derangement of rates so forcibly pointed out as the ground of decision in the Abilene Cotton Oil Case. Such has been the decision of the federal courts in every case in which the question has arisen."

The *Tift* case, supra, went to the Supreme Court of the United States (206 U. S. 428), but the precise question was not passed upon because the final action of the lower court was taken after the Interstate Commerce Commission had passed on the rates. However, the Supreme Court said at p. 437:

> "We are not required to say, however, that because an action at law for damages to recover unreasonable rates which have been exacted in accordance with the schedule of rates as filed, is forbidden by the Interstate Commerce Act, a suit in equity is also forbidden to prevent a filing or enforcement of a schedule of unreasonable rates or a change to unjust or unreasonable rates."

In the *Kiser* case, *supra*, the court said at page 199:

> "In my judgment the restraining order should remain in force a reasonable length of time to allow the complainants to present this matter to the Interstate Commerce Commission, and in the meantime the case here will be stayed until a determination by that body as to whether the proposed increase in rate is reasonable and proper, and as to what is a reasonable rate."

Certain Federal courts, however, denied similar applications to enjoin increased interstate rates not yet in effect until the Interstate Commerce Commission could determine their lawfulness. See *Atlantic Coast Line Ry. v. Macon Grocery Co.*, 166 Fed. 206 (C. C. A. 5th Circuit). However, we believe that the correct view of the law is expressed in the *Northern Pacific Ry. Co.* case from which we have quoted above.

I. C. C. Has Passed on Section 13 Petitions While Intrastate Rates Were Enjoined.

Fertilizer between Southern Points, 113 I. C. C. 389, 430, was a case before the Interstate Commerce Commission involving a petition filed with the Commission by carriers alleging that certain intrastate rates in South Carolina resulted in undue prejudice against interstate commerce in violation of Section 13 of the Interstate Commerce Act. At page 433 the Commission said:

> "Again on January 30, 1925, the South Carolina Commission ordered a still further reduction in the carload rates on fertilizer and materials, but this order was temporarily enjoined by the Federal court for the eastern district of South Carolina, and the proceeding was still pending when argument was here had."

And at page 435 it was said:

> "Unquestionably the present rates within South Carolina prejudice persons and localities in interstate commerce and prefer intrastate shippers. Furthermore, the reduced intrastate rates prescribed by the South Carolina commission in its order of January 30, 1925, if permitted to become effective, would result in unjust discrimination against interstate commerce and in undue prejudice to persons and localities in interstate commerce, as compared with the interstate rates herein prescribed. As compared with the latter rates, however, the present rates in South Carolina would not, on the whole, result in such unjust discrimination or undue prejudice.
>
> With respect to these intrastate cases we find:
>
> * * * * *
>
> 3. That, in view of the rates herein prescribed, the maintenance of the present intrastate rates in South Carolina will not for the future result, on the whole, in undue prejudice to persons or localities in interstate commerce, nor in unjust discrimination against interstate commerce, but that the maintenance of the intrastate rates in that State now temporarily enjoined would result in such undue prejudice and unjust discrimination."

Summary.

A Federal Court of equity has power to prevent irreparable loss and damage, or a threatened violation of law, by enjoining intrastate rates until the Interstate Commerce Commission can determine in a pending proceeding whether such rates unjustly discriminate against interstate commerce, for the following reasons:

States are prohibited by Section 13 of the Interstate Commerce Act from unjustly discriminating against interstate commerce by establishing unduly low rates for intrastate shipments. Only the Interstate Commerce Commission has jurisdiction to determine whether such unjust discrimination exists. Unjust discrimination by states against interstate commerce is forbidden by Section 13 at all times, before as well as after its existence is determined by the Commission. The Interstate Commerce Act expressly provides that it does not abridge or alter common law remedies, which would include the inherent power of a court of equity to enjoin irreparable damage or a threatened violation of law where there is no adequate remedy at law and where the court does not assume to decide administrative questions committed to the sole jurisdiction of the Commission. Federal Courts of equity have heretofore enjoined threatened increases in interstate rates until the Interstate Commerce Commission could determine their legality, which is no different in principle from what the court below did in this case.

The injunction granted in this case was a proper remedy as it prevented irreparable damage to interstate commerce and to appellees until action is taken by the Commission, without interfering with the right of the Interstate Commerce Commission to decide the administrative questions and without inter-

fering with the right of the state to prescribe intrastate rates which do not unjustly discriminate against interstate commerce. If the Interstate Commerce Commission eventually finds that reduced intrastate rates do not discriminate against interstate commerce such reduced intrastate rates will be made effective *from the date they were ordered by the North Dakota Commission* through the carriers under their bonds refunding to shippers the difference between the rates paid and the lower rates ordered by the North Dakota Commission, thus giving intrastate shippers the benefit of the rates ordered by State authority. On the other hand, if the Interstate Commerce Commission ultimately finds that the intrastate rates required by the North Dakota Commission's order of May 8, 1929, result in the character of discrimination against interstate commerce prohibited by Section 13 of the Act, there will have been no interference with the right of the state to fix intrastate rates because the state had no right to prescribe intrastate rates which unjustly discriminate against interstate commerce.

Unjust discrimination against interstate commerce by unduly low intrastate rates can be and usually is of far-reaching and disastrous effect. Manufacturers or producers shipping in interstate commerce lose their business to competitors in a position to use the unduly low intrastate rates, one locality or state is built up and permitted to prosper at the expense of another state or locality, and carriers engaged in interstate commerce lose revenue which should legitimately come from their intrastate operations, which loss must be made up by shippers of all commodities moving in interstate commerce in many different states because under the Transportation Act the carriers are entitled to interstate rates which will give them a fair return as a whole within such territory or groups as the Interstate Commerce Commission may fix.

If the Interstate Commerce Commission ultimately condemns the reduced intrastate rates such injuries to interstate commerce, which are of such a nature as to be irreparable when once committed, will not have occurred by reason of the injunction between the effective date of the North Dakota Board's order and the effective date of the Interstate Commerce Commission's order. The injunction is merely in aid of enforcing Section 13. If such an injunction cannot issue it means that for the period intervening between the effective dates of the North Dakota Commission's order and the Interstate Commerce Commission's order we will have the anomalous situation of an act of Congress expressly prohibiting unjust discrimination against interstate commerce with no means of giving effect thereto because the Interstate Commerce Commission has no suspension power with respect to intrastate rates. Equity courts exist to avoid such situations.

If appellees complied with the order of May 8, 1929, and established the reduced intrastate rates and they are later found unlawful by the Interstate Commerce Commission, appellees have no way of going back and collecting additional amounts from shippers in intrastate commerce, while intrastate shippers can through refunds by the carriers obtain the benefit of the reduced intrastate rates notwithstanding the issuance of the injunction. The slight inconvenience on the part of intrastate shippers in turning in their freight bills and applying for refunds is a matter of trivial consequence as compared with preventing far-reaching and irreparable destruction or injury to interstate commerce and a loss to appellees of more than $118,000 per annum in net revenue.

II.

THE ONLY QUESTION WHICH THE COURT WILL REVIEW IN THIS CASE IS WHETHER THE LOWER COURT ABUSED ITS DISCRETION.

The only question which the Court will review on this appeal is whether the court below abused its discretion in granting the interlocutory injunction. In the recent case of *Alabama v. U. S.*, 279 U. S. 229, it was said at page 231:

> "It is well-established doctrine that an application for interlocutory injunction is addressed to the sound discretion of the trial court; and that an order either granting or denying such an injunction will not be disturbed by an appellate court unless the discretion was improvidently exercised (citing authorities). The rule generally to be applied in the exercise of that discretion, is stated in our recent decision in *Ohio Oil Co. v. Conway*, 279 U. S. 813.
>
> That the doctrine to be followed in reviewing such an order applies in the case of an order of a court of three judges denying an interlocutory injunction does not admit of doubt (citing authorities). The duty of this Court, therefore, upon an appeal from such an order, at least generally, is not to decide the merits but simply to determine whether the discretion of the court below has been abused. See *U. S. v. B. & O. R. R. Co.*, 225 U. S. 306, 325. An examination of the record here reveals no such abuse, and we must remand the case to the court below for final disposition on the merits."

III.

THERE WAS NO ABUSE OF DISCRETION IN GRANTING THIS INJUNCTION.

Appellants' brief is devoted almost entirely to support their position that the lower court had no power to grant such an injunction as this under any circumstances. There is no serious claim that the court of three judges abused its discretion in issuing such an injunction as this in the event the Court had the power. This is apparent also from the fact that counsel for appellants make no reference to the contents of the lengthy affidavits which they presented to controvert certain allegations of the bill of complaint.

In the case of *Ohio Oil Co. v. Conway,* 279 U. S. 813, 815, this Court said:

> "Where the questions presented by an application for an interlocutory injunction are grave, and the injury to the moving party will be certain and irreparable if the application be denied and the final decree be in his favor, while if the injunction be granted the injury to opposing party, even if the final decree be in his favor, will be inconsiderable, or may be adequately indemnified by a bond, the injunction usually will be granted. *Love v. A. T. & S. F. R. Co.,* 185 Fed. 321, 331-332."

The lower court's action conformed to that principle. In this case the Interstate Commerce Commission once determined that a certain relationship between the North Dakota intrastate class rates and the interstate class rates must exist in order to avoid unjust discrimination against interstate commerce and established that relationship by an order fixing the intrastate rates. That order would no doubt be in effect today if the North Dakota Commission had not subsequently by its

own order established the same rates as the Interstate Commerce Commission required. It did this in order to induce the Interstate Commerce Commission to cancel its order and thus restore to the State Commission its jurisdiction over intrastate rates. When the Interstate Commerce Commission cancelled its order it must have done so only because it considered that subsequently the State Commission had by its own act removed the unlawful discrimination and would not again create similar discriminations. The Interstate Commerce Commission's subsequent action with respect to interstate class rates was generally to increase them, thus leaving the intrastate rates more favorably related to the interstate rates, as a general proposition, than at the time the Interstate Commerce Commission made its discrimination order. The North Dakota Commission cooperated with the Interstate Commerce Commission in the Docket 17,000 proceeding regarding class rates, with a view of working out an adjustment of interstate and intrastate rates which would be lawful. After such cooperation and the taking of a large amount of evidence the appellant Board of Railroad Commissioners of North Dakota issued its order of May 8, 1929, making a 10% reduction in such of the intrastate class rates in North Dakota as move 90% of the business, and this was done without regard to the finding of the Interstate Commerce Commission in the discrimination case, which finding still stands although the order was cancelled.

Under such conditions as this the natural thing for the court of three judges to do was to hold the matter in statu quo until the Interstate Commerce Commission could render a decision in pending proceedings which would determine the question of whether the reduced intrastate rates would result in unjust discrimination against interstate commerce. The lower court had every right to believe that a serious question of unjust dis-

crimination existed and that a case of irreparable damage to interstate commerce and to appellees would occur. The lower court in its opinion stated:

> "We think, however, in view of the pendency of Docket 17,000, that the orderly and logical way to have the question finally settled is to permit the Interstate Commerce Commission to complete that investigation and file its decision before there shall be an attempt to adjust intrastate class rates even to the extent attempted by the order of May 8th. Such rates, if they prove temporary merely—as the plaintiffs contend they will—will only briefly afford the relief sought and may ultimately prove more of a disadvantage than otherwise to those for whose benefit they are intended, while at the same time they may cause a substantial loss to the carriers and an undue burden upon interstate commerce. On the other hand, if the rates are lawful—as the defendants claim—and are enjoined, their effectiveness cannot long be postponed in any event, and, to a considerable extent, the injury done by staying their effectiveness can be mitigated by requiring the railroads to make reparation in case it is found that they do not encroach upon interstate commerce and that the State Board was within its rights in fixing them."

IV.

REPLY TO APPELLANTS' CONTENTIONS.

(1) The argument upon which appellants apparently place the principal reliance is contained on pages 10 to 33 of their brief under the caption "The pendency of a proceeding before the Interstate Commerce Commission under the Hoch-Smith Resolution, known as Docket 17,000, Part 2, is not ground for and does not give the court jurisdiction to grant an interlocutory injunction."

It is said that it was "beyond the jurisdiction of the court" to enjoin the reduced intrastate rates until the administrative

question involved is determined by the Interstate Commerce Commission in its pending Docket 17,000 (R. 13). The argument to support this position is that under the commerce clause of the Constitution Federal courts have no jurisdiction, as respects intrastate rates, except for the enforcement of some act of Congress, and that intrastate rates prescribed by state authority may be affected only in the manner and to the extent that Congress by legislation, for the proper protection of interstate commerce, has so provided (R. 13); that Congress intended that the investigation by the Interstate Commerce Commission under the Hoch-Smith Resolution should result in removing unjust discrimination against interstate commerce only through the operation of orders made by the Commission, and hence the Hoch-Smith Resolution gives the Federal courts no jurisdiction over intrastate rates until after the Interstate Commerce Commission has made an order with respect thereto as a result of its investigation (R. 19). In other words, it is argued that since Congress has not made express provision by statute for suspending the operation of intrastate rates prescribed by state authority until the fact of unjust discrimination has been determined by the Commission, such power does not exist in a Federal Court of Equity in any case.

That contention is fully met by our discussion under heading I of this brief. Appellants' argument overlooks the fact that section 13 of the Interstate Commerce Act provides that unjust discrimination against interstate commerce by intrastate rates "is hereby forbidden and declared to be unlawful", which means at all times, *before* the Interstate Commerce Commission makes its finding of discrimination as well as subsequent thereto. When the lower court granted this injunction it did so in aid of enforcing this act of Congress.

Appellants' argument also overlooks the fact that Federal courts have inherent equity powers, one of which is to prevent

irreparable loss or injury in proper cases, and that the exercise of those powers is not dependent upon an express declaration by Congress of the existence of such power in connection with each law which it enacts. The injunction in this case was an appropriate common law remedy which "can be enforced consistently with the scheme and purpose of the interstate commerce act" and therefore is not abrogated or displaced by the interstate commerce act. *Pa. Rd. v. Sonman Coal Co., supra.*

There is no reason for suspending the general equity powers of courts with respect to the issuance of injunctions to prevent irreparable injury in proper cases merely because the subject matter is intrastate rates prescribed by the authority of a state. The operation of state laws and acts of state officials have been enjoined many times by Federal courts. This case should be considered no different from any other case in which an injunction is asked to prevent irreparable injury. If Congress did not intend that Federal courts should issue injunctions against state authorities in proper cases to prevent irreparable damage, why did it enact section 266 of the Judicial Code which makes express provision for a court of three judges to hear and determine applications for injunctions suspending or restraining the enforcement, operation or execution "of an order made by an administrative board or commission acting under and pursuant to the statutes of such state"?

(2) At page 32 of appellants' brief it is said that if the pendency of Docket 17,000 before the Interstate Commerce Commission prevents the North Dakota Commission from regulating the intrastate class rates here involved it disables the rate-making authorities of each state from dealing with any intrastate rates because Docket 17,000 involves the question of discrimination against interstate commerce in connection with all intrastate rates in the United States.

The lower court did not grant the injunction merely because of the pendency of Docket 17,000. The injunction was granted because of a showing made to the court that the North Dakota Commission disturbed a relationship between all interstate and intrastate class rates in North Dakota which the Interstate Commerce Commission previously found should exist in order to avoid unjust discrimination against interstate commerce, because the disparity between interstate and intrastate rates so created was substantial and that there was good reason to believe that the Interstate Commerce Commission in Docket 17,000 would condemn the reduced intrastate rates, because irreparable damage would occur if the reduced intrastate rates were not enjoined until the Interstate Commerce Commission could determine the administrative questions involved, because the North Dakota Commission and appellees participated in a hearing at which evidence was introduced with respect to these identical class rates and orderly procedure seemed to require awaiting a decision from the Interstate Commerce Commission before putting into effect a new basis of intrastate class rates which in all probability would be only temporary, and because the carriers' bonds would insure the benefit of the reduced intrastate rates to the public in the event they were finally approved by the Interstate Commerce Commission. Unless a proper showing is made a Federal Court will not enjoin any intrastate rates merely because of the pendency of Docket 17,000. If a proper showing can be made then such injunction should issue.

(3) It is implied by appellants that the injunction prevents the North Dakota Board from removing discriminations in the intrastate rate adjustment itself. As a matter of fact, the state commission by its order of May 8, 1929, created new discriminations within the state of North Dakota because it established a scale of class rates to, from and between certain towns

in the state which are to be maxima at intermediate points, which is 10% lower than the general scale of class rates which must be paid by certain other towns. Furthermore, discriminations in the intrastate class rate structure within North Dakota, if any exist, could have been remedied by increasing some of the rates and bringing them in harmony with the interstate rates rather than by reducing the rates which carry 90% of the traffic and thus placing them on a substantially lower level than the interstate rates fixed by the Interstate Commerce Commission.

(4) Appellants contend at page 45 of their brief that the injunction should not have been granted for the reason that appellees have a plain, adequate and complete remedy at law in the state courts of North Dakota because the Public Utilities Act of that state provides for a review in the state courts of the orders of the Board of Railroad Commissioners.

Assuming that appellees in this case had a plain, adequate and complete remedy at law in the state courts of North Dakota, which they did not as supersedeas orders are discretionary with the court and the court cannot determine the question of unjust discrimination against interstate commerce, that fact does not affect the equity jurisdiction of the Federal court. It is sufficient if there is no plain, adequate or complete remedy in the Federal Courts. See:

Robinson v. Campbell, 3 Wheaton 212, at p. 222.
Barber v. Barber, 21 Howard 583, at p. 591.
Sheffield Furnace Co. v. Witherow, 149 U. S. 574.
Mississippi Mills v. Cohn, 150 U. S. 202, at p. 205.
Smyth v. Ames, 169 U. S. 466, at p. 516.
Risty v. C. R. I. & P. Ry., 270 U. S. 378, at p. 388.

It is respectfully submitted that the action of the lower court in granting an interlocutory injunction in this proceeding should be affirmed.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No. 364

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF NORTH DAKOTA ET AL., APPELLANTS,

vs.

GREAT NORTHERN RAILWAY COMPANY ET AL., APPELLEES.

REPLY TO BRIEFS OF AMICUS CURIÆ FILED BY PUBLIC SERVICE COMMISSION OF ALABAMA ET AL. AND BY RAILROAD AND WAREHOUSE COMMISSION OF MINNESOTA.

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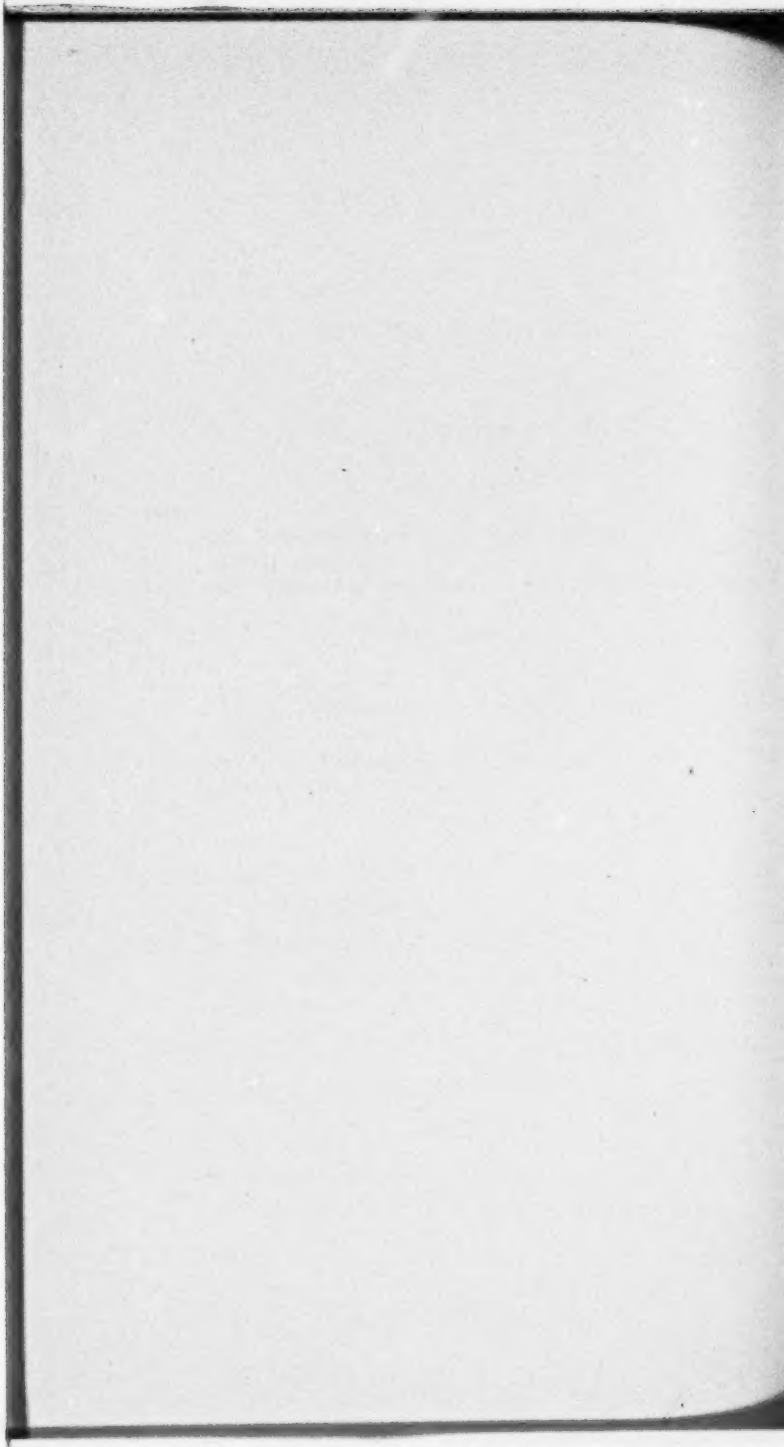

IN THE

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Reply to Brief of Railroad and Warehouse Commission of Minnesota.

No case is cited in the brief of the Minnesota Railroad and Warehouse Commission where the Supreme

Court of the United States has passed upon the precise question in this case. The cases cited involve the question of the right of a court to pass upon questions committed by Congress to the sole jurisdiction of the Interstate Commerce Commission. In this case the lower court did not pass upon any administrative question prior to action by the Interstate Commerce Commission, but expressly left to that Commission the right to determine the question of unjust discrimination against interstate commerce. The lower court merely held the matter in *statu quo* to avoid threatened irreparable loss and damage until the Interstate Commerce Commission could pass on the question of unjust discrimination against interstate commerce.

Several cases are cited where Federal courts refused to enjoin *interstate* rates filed by carriers with the Interstate Commerce Commission until the shippers' complaints against such rates could be determined by that Commission. These actions were brought before the Interstate Commerce Commission had the suspension power which it now has. As pointed out on pages 15 to 18 of appellees' brief, other Federal courts held to the contrary and the reasoning of the United States Circuit Court of Appeals for the Ninth Circuit in the case of *Northern Pacific Ry. Co. vs. Pacific Coast Lumber Manufacturers Association,* 165 Fed. 1, seems more logical.

However, it should be kept in mind that the effect of the decision in the case of *Wickwire Co. vs. N. Y. C. R. Co.,* 181 Fed. 316, cited by the Minnesota Railroad and Warehouse Commission, was that Congress

did not intend that the courts should interfere with *interstate* rates established by the carriers by filing tariffs with the Interstate Commerce Commission until the Interstate Commerce Commission had determined their reasonableness. What the Interstate Commerce Act revealed with respect to the intent of Congress regarding *interstate* rates is one thing, and it is another what the Interstate Commerce Act intends with respect to protecting interstate commerce from interference by the states. These two matters are governed by different provisions of the Interstate Commerce Act. There is no analogy between the two situations so far as the intent of Congress is concerned.

Reply to Brief of Public Service Commission of Alabama et al.

It is said in this brief that "if the injunction below shall be sustained, the destruction of state power to regulate intrastate rates will be complete." To determine whether the injunction in this proceeding takes away from the states their power to regulate intrastate commerce, it is necessary to have in mind what the powers of the states actually are in this respect. A state has no power to use an instrumentality of intrastate commerce in such a way as to destroy or impede interstate commerce, and if intrastate rates which it prescribes have that effect they are unlawful and the Federal Government has the right to fix intrastate rates which will avoid such unjust discrimination. *The Shreveport case* (*Houston and Texas Ry. vs. United States,* 234 U. S. 342). Under the injunction

granted by the lower court if the Interstate Commerce Commission ultimately finds that the reduced intrastate rates imposed by the State of North Dakota are unjustly discriminatory of interstate commerce, the State of North Dakota has had none of its rights interfered with because of the reduced intrastate rates not being in effect from the time they were imposed to the time that the Interstate Commerce Commission finds them unjustly discriminatory, for the reason that the state under the Constitution of the United States and Section 13 of the Interstate Commerce Act *never had a right* to impose or require rates which unjustly discriminate against interstate commerce. On the other hand, should the Interstate Commerce Commission ultimately find that the reduced intrastate rates prescribed by the State of North Dakota are not unjustly discriminatory of interstate commerce, it does not mean that the state has been deprived of its right to make intrastate rates from the time the reduced intrastate rates were prescribed by the state until they are approved by the Interstate Commerce Commission, because under the terms of the injunction and appellees' bonds the carriers must refund to shippers in intrastate commerce the difference between the rates charged and the intrastate rates ordered by the state, and through such refunds shippers in intrastate commerce will receive the benefit of the reduced intrastate rates as of the date they were ordered by the state authority.

Paragraph (4) of Section 13 of the Interstate Commerce Act prohibits states from unjustly discriminating against interstate commerce at all times. How can

the mandate of Congress in this respect be carried out unless an equity court, upon a proper showing can hold the reduced intrastate rates in suspense until the Interstate Commerce Commission determines the administrative questions? Where this can be done by a court of equity without infringing upon the rights of the states and without interfering with the Interstate Commerce Commission's administrative powers, the court is simply lending its aid in making effective the prohibition against interstate commerce so emphatically declared by Congress in Section 13. Where Congress forbids a thing there must be some way of preventing that which is forbidden. Because there are no precedents for an equity court doing the precise thing that the lower court did in this case does not mean that the court does not have the power which it declared it had. The mere fact that the relief in question may be somewhat novel or unusual is no argument to defeat the equity jurisdiction of the court. The relief which equity gives is extended to any situation where threatened irreparable loss and damage may occur or where there is a threatened violation of a law.

It is said that if this injunction is sustained "it would be ground for a like injunction to prevent the rate-making authorities of any state from effecting any change in any intrastate rates whatsoever." The sort of injunction granted in this case does not prevent the state from making any changes in the intrastate rates which are not unjustly discriminatory against interstate commerce and that is the only sort of changes which the state under any circumstances has the right

to make. If the changes made by the state are not contrary to the requirements of Section 13 of the Interstate Commerce Act the injunction does not prevent them from ultimately becoming effective from the very date they were ordered by the state authority. We do not believe that injunctions of this sort would be lightly granted by a court of three judges, but only upon a satisfactory showing that the reduced intrastate rates are of such a character as to give the court reasonable ground for belief that they may be held to be unjustly discriminatory by the Interstate Commerce Commission. In this case, the lower court had every reason to believe that irreparable loss and damage might result because the state commission disturbed a relationship between the interstate and intrastate class rates which the Interstate Commerce Commission had previously prescribed as necessary to prevent unjust discrimination against the interstate class rates. The Interstate Commerce Commission did not vacate its order fixing the intrastate rates because it thought it had made a mistake, but because it was induced to do so by the state commission on the representation that the state commission had itself adopted the identical intrastate rates which the Interstate Commerce Commission had found should exist in order to avoid unjust discrimination against interstate commerce. The lower court had every right to believe that the Interstate Commerce Commission would condemn the disparity between the interstate and intrastate rates which would result from the state commission's order of May 8, 1929, just as the Interstate Commerce Commission

had condemned the disparity which existed when it had occasion previously to examine into the matter. We venture the opinion that if the injunction in this case is sustained by this court that the power of equity courts to grant such injunctions as this would be seldom exercised because of the necessity of the carriers or shippers making out a strong case of irreparable loss and damage and probability that the Commission will ultimately find the intrastate rates unreasonable.

It is said that the injunction in this case was beyond the power of the court "unless something may be found in the Hoch-Smith resolution restricting the jurisdiction of the states over intrastate rates, and operating to empower the court to grant that injunction." This argument entirely misconceives the situation. The injunction was granted not because of any provisions in the Hoch-Smith resolution which it is claimed restricts the rights of the states over intrastate commerce, but because of the provisions in Section 13 emphatically and unconditionally forbidding and prohibiting at all times unjust discrimination against interstate commerce by intrastate rates. The court's power in this case rests upon Section 13. The Hoch-Smith resolution did not change the Interstate Commerce Act or nullify any of the provisions of Section 13. The Hoch-Smith resolution does not enter into this case except that it resulted in an investigation which was pending before the Interstate Commerce Commission on May 8, 1929, in which was being tried out and in which was submitted for decision the question of what relationship shall exist between the North Dakota intrastate class

rates and the interstate class rates to avoid unjust discrimination against interstate commerce.

In the *Minnesota Rate Cases*, 230 U. S. 352, referred to, the carriers asked the court to hold that intrastate rates unjustly discriminated against interstate commerce. In the case at bar, appellees did not ask the court to do this. Under the injunction, the finding of the Interstate Commerce Commission when made is to govern the entire situation from the date that the intrastate rates were prescribed by state authority.

Conclusions.

If the court holds in this case that a Federal Court of equity has no power to grant such an injunction as this, it can only mean that there is absolutely no way to prevent a state, for a considerable period of time until the Interstate Commerce Commission can act, from imposing upon carriers and upon the public rates which will seriously injure or even destroy interstate commerce, with no possible means of ever remedying the damage done. It will mean, for example, that the State of North Dakota can impose a scale of intrastate class rates which would for a year, or perhaps two, while the Interstate Commerce Commission has the matter under consideration, enable a wholesale grocer at Fargo, N. D., who ships in intrastate commerce, to take away from his competitor at Moorhead, Minn., a mile away across the Minnesota-North Dakota state line, who ships to North Dakota in interstate commerce, the opportunity of selling groceries to the same consumer

in North Dakota. Of course, the Moorhead wholesale grocer could sell to this consumer but only by absorbing out of his profits the difference between the interstate and the North Dakota intrastate rates, and it is a well known fact that disparities of this kind in freight rates have the effect of absolutely shutting out from the market the merchant having the higher rate. If the Interstate Commerce Commission ultimately finds that the state rates from Fargo unjustly discriminate against the interstate rates from Moorhead, there is no way that the Moorhead jobber can be protected unless by an injunction such as was granted in this case. If the lower court did not have the right to grant the injunction then it is no protection to the Moorhead jobbers that Section 13 of the Interstate Commerce Act prohibited such an unjust discrimination.

It is inconceivable that Congress intended by Section 13 to prevent unjust discrimination against interstate commerce only from the time that the fact of such unjust discrimination is formally determined by the Interstate Commerce Commission, and that it intended that until such finding is made the states should have a free hand to irreparably injure or even destroy interstate commerce. Such an idea is utterly inconsistent with the powers of Congress under the Commerce Clause of the Constitution, and with the express intent of Congress as disclosed by Section 13. It is inconceivable that Congress intended that 48 states should be absolute masters of interstate commerce for a considerable period while a necessarily slow-moving ad-

ministrative body has under consideration the effect of the action of the states.

To hold that the lower court had no power to issue such an injunction as this is to say that there is a hiatus in the freedom of interstate commerce from state interference during which time the states and not Congress may regulate interstate commerce. This seems to us irreconcilable with Article I, Section 8 of the Constitution of the United States which grants to Congress power "to regulate commerce • • • among the several states."

Respectfully submitted,

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April 19, 1930.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 364.

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF NORTH DAKOTA, AND C. W. MCDONNELL, FAY HARDING AND BEN C. LARKIN AS MEMBERS OF AND CONSTITUTING SAID BOARD, AND JAMES MORRIS AS ATTORNEY GENERAL OF THE STATE OF NORTH DAKOTA,
Appellants.

vs.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY, CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, AND FARMERS GRAIN AND SHIPPING COMPANY, *Appellees.*

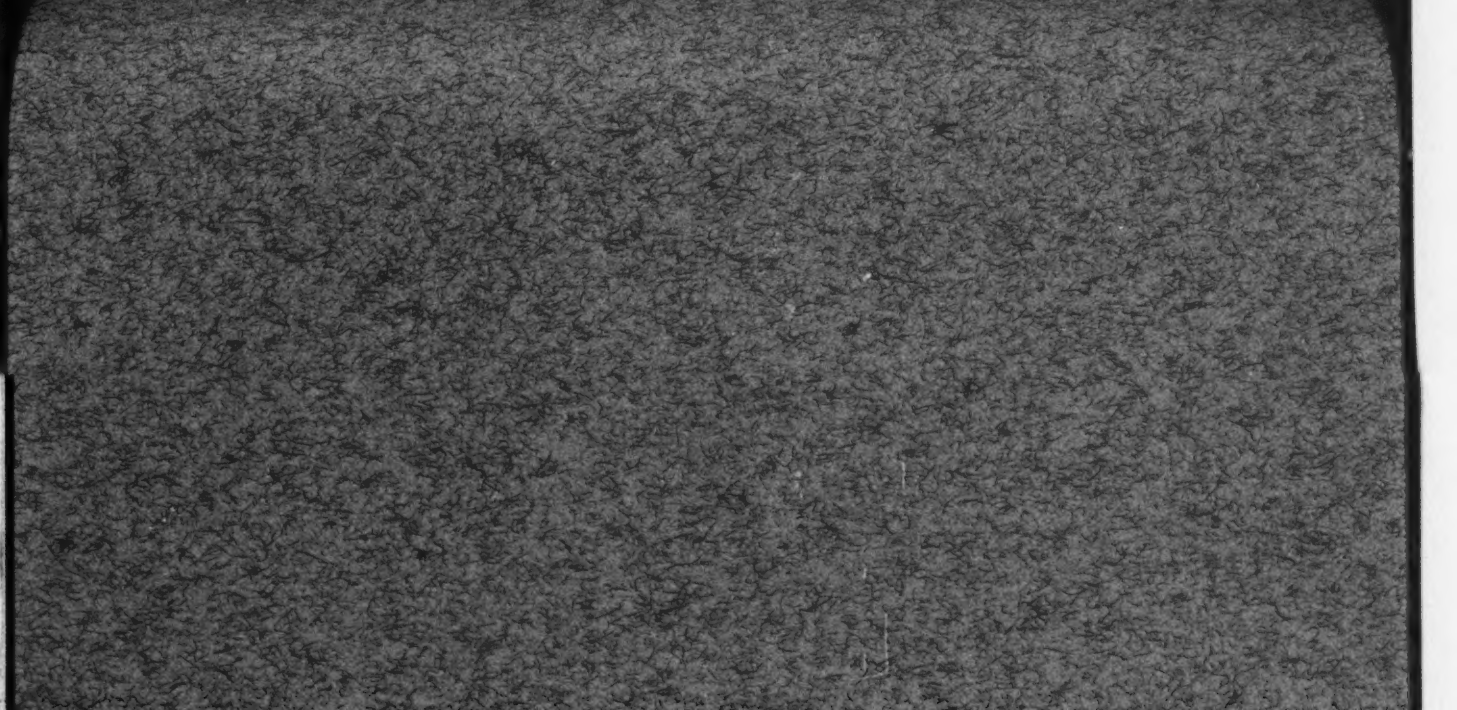
BRIEF OF PUBLIC SERVICE COMMISSION OF ALABAMA, ET AL., AMICI CURIAE.

For the Regulatory Commissions of Thirty-seven States.

JOHN E. BENTON,
602-606 Otis Building,
Washington, D. C.

March 10, 1930.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.



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IN THE

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BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF NORTH DAKOTA, AND C. W. MCDONNELL, FAY HARDING AND BEN C. LARKIN AS MEMBERS OF AND CONSTITUTING SAID BOARD, AND JAMES MORRIS AS ATTORNEY GENERAL OF THE STATE OF NORTH DAKOTA,
Appellants.

vs.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY, CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, AND FARMERS GRAIN AND SHIPPING COMPANY, *Appellees.*

BRIEF OF PUBLIC SERVICE COMMISSION OF ALABAMA, ET AL., AMICI CURIAE.

This brief is filed on behalf of the states of Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Mississippi, Missouri,

Montana, Nebraska, Nevada, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming, by their regulatory commissions signatories hereto.

REFERENCE TO OPINION BELOW.

The opinion below, in the United States District Court for the District of North Dakota, is reported *Great Northern Ry. Co. et al. v. Board of Railroad Commissioners of State of North Dakota, et al.*, 33 Fed. 2d Series, 934.

STATEMENT OF FACTS.

The statement of facts contained in the brief of the appellants is accepted by the commissions which are parties to this brief.

ARGUMENT.

The Pendency of a Proceeding Before the Interstate Commerce Commission Under the Hoch-Smith Resolution, the Decision in which May Affect Intrastate Rates, Does Not Give the Court Jurisdiction to Enjoin Changes in Those Rates.

This brief will be devoted solely to argument of the proposition just stated.

The commissions joining herein desire to urge upon the Court that if the injunction below shall be sustained the destruction of state power to regulate intrastate rates will be complete.

The court below granted the injunction solely upon the ground that the existing intrastate rates in North Dakota, which would be changed by putting into effect

the rates covered by the injunction, are involved in the *Rate Structure Investigation,* I. C. C. No. 17,000. The order of investigation in that case (which is set forth in full at page 14 of appellants' brief) involves all railroad rates, interstate and intrastate, in the United States. If the pendency of that proceeding is ground for the injunction granted in this case, it would be ground for a like injunction to prevent the rate-making authorities of any state from effecting any change in any intrastate rates whatsoever.

The *Rate Structure Investigation,* No. 17,000, was instituted in obedience to the Hoch-Smith Resolution (S. J. Res. 107, 68th Congress, approved January 30, 1925). That resolution directed the Commission "to make a thorough investigation of the rate structure of common carriers subject to the interstate commerce act, in order to determine to what extent and in what manner existing rates and charges may be unjust, unreasonable, unjustly discriminatory, or unduly preferential * * * and to make, in accordance with law, such changes, adjustments, and redistribution of rates and charges as may be found necessary to correct any defects so found to exist." The resolution did not extend the jurisdiction or increase the power of the Commission. It required a general survey of the rate structure and the making of such changes "in accordance with law" as the Commission should find necessary to remedy defects either of unreasonableness or of discrimination. In the exercise of its power to require the removal of undue discriminations, the Commission might change intrastate rates, and hence the investigation extended to such rates, but with respect to them the Commission was to exercise no new powers.

The reasoning upon which the injunction below was based does not very clearly appear from the opinion. It does appear, however, that the court granted the injunction to preserve the status of the rates under investigation. This is what the court said:

> "We do not pass upon the question as to whether the mere fact that a controversy exists between a carrier and a state rate-making body as to the validity of an intrastate rate alleged to discriminate against interstate commerce, justifies an injunction such as prayed for here, or whether a carrier may, by commencing a proceeding before the Interstate Commerce Commission to test the validity of an intrastate rate under Section 13 of the Interstate Commerce Act, after an order has been made by a state commission fixing such rate, properly call for injunctive relief. Our opinion is, however, that, under the circumstances of this case, this Court can and should *for the purpose of preserving the status quo until such time as the Interstate Commerce Commission may complete its investigation and file its decision in Docket No. 17,000,* grant an interlocutory injunction." (R. 87) (Italics ours)

The fundamental question is whether intrastate rates continue subject to the regulation of the states, inasmuch as the rates could not be properly enjoined if they were lawfully prescribed.

This is not a new question. Upon the fullest review of the authorities this Court has held that power to regulate intrastate rates was reserved to the states by the federal constitution, subject only to such restriction upon its exercise as may result from the exercise by the Congress of the power granted to it to regulate interstate and foreign commerce under the Commerce

Clause of the Constitution. *Minnesota Rate Cases*, 230 U. S. 352.

This power of the Congress to regulate includes the power to protect; and Congress has exercised the power by forbidding discriminatory rates, either interstate or intrastate. *Houston E. & W. Tex. Ry. v. U. S.*, 234 U. S. 342. But the question whether rates are or not discriminatory is not a question for the courts. Congress has committed that question to the Interstate Commerce Commission, and in the absence of a determination by that Commission no court may enjoin rates upon the ground of alleged discrimination. *Minnesota Rate Cases*, 230 U. S. 352, 419; *Great Northern Railroad v. Merchants Elevator Co.*, 259 U. S. 291.

By Transportation Act, 1920, Congress broadened the inhibition against unduly discriminatory rates to include rates so unduly low as to yield inadequate compensation to carriers for the transportation service covered by such rates. But the jurisdiction of the states over intrastate rates was not otherwise affected. No uniform control over all rates was created. So far as intrastate rates are concerned, the Interstate Commerce Commission was given power to control the same only to the extent of removing discriminations which might operate as a real discrimination against and obstruction to interstate commerce. It was not given power to exercise general regulation of intrastate commerce. *Wisconsin Railroad Commission v. C. B. & Q. R. R.*, 257 U. S. 563. The question of discrimination remains still a question for the Commission and not for the courts. *Great Northern Railroad v. Merchants Elevator Co.*, 259 U. S. 291.

No claim is made in this case that the rates enjoined

are confiscatory, and the court below expressly disclaimed any finding of its own as to the lawfulness or the unlawfulness of the rates enjoined, saying: "That question is before the Interstate Commerce Commission and it alone has jurisdiction to determine it. It may find that the State Board was well within its rights in doing what was done, or it may find to the contrary."

The rates, then, were enjoined only for the purpose, as we have before said, of maintaining the existing status till the Interstate Commerce Commission should make its decision as to class rates in *Rate Structure Investigation*, No. 17,000.

Under the decisions which have been cited, it would seem clear that the injunction sought to be set aside was beyond the power of the court unless something may be found in the Hoch-Smith Resolution restricting the jurisdiction of the states over intrastate rates, and operating to empower the court to grant that injunction.

The Hoch-Smith Resolution is set forth in full, in the appellants' brief, beginning at page 14. Examination of it will show that, aside from its directions as to agricultural rates, which need not be here discussed, it lays no new injunction upon the carriers, and confers no additional power upon the Interstate Commerce Commission.

It may be conceded that the direction to the Commission to remove undue discriminations extended to discriminations created by intrastate rates. It may furthermore be conceded that it would be more "orderly" procedure if no changes should be made in any rates, interstate or intrastate, while the survey ordered by the Hoch-Smith Resolution is in progress.

But the question here,—disregarding any question of the constitutional power of Congress,—is whether Congress in the resolution has suspended the accustomed rate-making power of the states, or has empowered the court to suspend the exercise of that power.

There is in the resolution certainly no express provision in any way restricting the exercise of the rate-making power of the states; and there is no provision from which any intent to suspend that power may be implied.

If it be argued that the rate structure should remain unchanged while the investigation directed by the resolution is in progress so that the same may be completed as early as shall be possible, and that accordingly it must be concluded that Congress by the resolution intended to inhibit rate changes during the progress of the investigation, it may be said in reply that it is not necessary that the rate structure shall remain unchanged in order that the investigation may be expeditiously determined. The Interstate Commerce Commission may determine what rates in existence when the resolution was adopted were discriminatory, and what rates should now be made effective in place of those rates, regardless of intervening changes.

It may also be pointed out that if the resolution operates to prevent state authorities from making rate changes it must likewise operate in the same way to prevent voluntary changes by the carriers themselves, since voluntary changes would be just as prejudicial to "orderly" procedure as changes made by compulsion of state law. But disability on the part of state rate-making authorities and of the carriers to make changes

in rates would result in an intolerable situation, which Congress could not have contemplated.

The power of the railroads and of state authorities to change intrastate rates being suspended, there would be no power which could make necessary changes in intrastate rate structures during the pendency of No. 17,000. The Interstate Commerce Commission itself could not make such changes, since its power extends only to the removal of discriminations against interstate commerce. *Mutual Creamery Co. v. American Express Co.*, 132 I. C. C. 207, 210; *Illinois Coal Cases*, 62 I. C. C. 741, 743. Rate structures would be frozen, and changes in rates which are often called for by the exigencies of business could in no way be met.

The Hoch-Smith Resolution was adopted more than five years ago, and the No. 17,000 investigation was instituted by the Interstate Commerce Commission on March 12, 1925. How many more years will elapse before the investigation is ended no man can tell. Adopting language of this Court from the *Minnesota Rate Cases* opinion, "It can not be supposed that Congress * * * attempted to override the accustomed authority of the states without the provision of a substitute." And certainly it would not have destroyed the power of existing rate regulatory authorities and at the same time the power of the carriers themselves to make necessary changes in rates as need for the same should arise.

The Hoch-Smith Resolution from the first has been regarded as not interfering with the rate-making power of the carriers and of the states. The carriers have continued to institute rate changes, in conformity with the law, at will, both interstate and intrastate; and

the state commissions generally have continued to make rate orders. *Alabama Public Service Commission v. L. & N. R. R. Co., et al.*, 39 Alabama Public Service Commission Reports, 283, November 9, 1928; *In Re: Carload and Less Than Carload Rates on Fertilizer Between Points in the State of Florida*, 31st Annual Report Florida Railroad Commission, p. 93, May 10, 1927; *In Re: General Revision of Rates on Iron and Steel Articles Carload and Less Carload Between Points Within State of Georgia*, 53rd and 54th Annual Report Georgia Public Service Commission, p. 112, December 15, 1926; *In Re Rates of Common Carriers by Railroad on Coal and Coke*, 21st Annual Report of the Corporation Commission of Oklahoma, p. 365, July 25, 1925; *Cattle and Horse Raisers Association of Oregon, et al v. Southern Pacific Co.*, 29th Annual Report of the Public Service Commission of Oregon, May 24, 1926; *C. T. Kuhns & Son, et al vs. Central Railroad of New Jersey*, Order 2272—Complaint Docket 7869, Public Service Commission of Pennsylvania, July 9, 1929; *In the Matter of Rates for the Transportation of Crushed Stone from Hellams, S. C., to Points on the Southern Railway Within South Carolina*, 50th Annual Report of Railroad Commission of South Carolina, p. 19-A, January 25, 1928; *Pfaff & Smith Builders Supply Co. et al. vs. The C. & O. Ry. Co.*, Vol. 2—Decisions West Virginia Public Service Commission 1922-1928, p. 672, April 3, 1928.

The commissions filing this brief argue that the injunction below disregards the cooperative provisions of the Interstate Commerce Act, and the cooperative agreement between the Interstate Commerce Commission and the state commissions made conformably to those provisions.

This Court in the *Wisconsin Passenger Fare Case* suggested a course whereby the rate-making power of the states, in cases where federal orders prescribing rates had been made, might be restored to the states, leaving to the state commissions power to deal with intrastate rates and increase them or reduce them in their discretion (257 U. S. 590). Acting in conformity with this suggestion, the federal and state commissions in May, 1922, adopted a cooperative agreement which was reported by the Interstate Commerce Commission to Congress in its annual report filed December 1, 1922, at page 8. The record in this case discloses that the North Dakota Commission has fully recognized the obligation of that state to maintain a proportionate and equitable share of the income of the carriers from intrastate traffic. The record discloses also that the North Dakota Commission is cooperating with the Interstate Commerce Commission, and that the order prescribing the rates covered by the injunction below expressly provided that the same was without prejudice to different conclusions which might be reached in the cooperative proceedings now pending jointly before the Interstate Commerce Commission in No. 17,000. The purpose of the North Dakota Commission to conform its rates to the rate structure finally established by the Interstate Commerce Commission is evident.

The state commissions most respectfully urge that the primary jurisdiction of the states over intrastate rates, subject to the supervisory power of the Interstate Commerce Commission, has heretofore been clearly recognized by this Court, and that the operation of state laws and state regulatory agencies in the exercise of their power should not be impeded by injunctions such as is here sought to be set aside.

ADOPTION OF APPELLANTS' BRIEF.

The commissions filing this brief refrain from extending the same, and adopt as their own the argument made by the Appellants in their brief heretofore filed herein.

Respectfully submitted,

ALABAMA PUBLIC SERVICE COMMISSION
By Hugh White, President.
ARIZONA CORPORATION COMMISSION
By Loren Vaughn, Chairman.
ARKANSAS RAILROAD COMMISSION
By Clay S. Henderson, Chairman.
RAILROAD COMMISSION OF CALIFORNIA
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PUBLIC UTILITIES COMMISSION OF COLORADO
By Otto Bock, Chairman.
RAILROAD COMMISSION OF FLORIDA
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By James A. Perry, Chairman.
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March 10, 1930.

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Supreme Court of the United States

OCTOBER TERM, 1929.

No. 364.

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF NORTH DAKOTA, AND C. W. MCDONNELL, FAY HARDING AND BEN C. LARKIN, AS MEMBERS OF AND CONSTITUTING SAID BOARD, AND JAMES MORRIS, AS ATTORNEY GENERAL OF THE STATE OF NORTH DAKOTA, *Appellants,*

vs.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY; MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY; CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, AND FARMERS GRAIN AND SHIPPING COMPANY, *Appellees.*

BRIEF OF THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF MINNESOTA AMICUS CURIAE.

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vs.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY; MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY; CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, AND FARMERS GRAIN AND SHIPPING COMPANY, *Appellees.*

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

May it please the Court:

The undersigned as counsel for the Railroad and Warehouse Commission of the State of Minnesota respectfully move this honorable court for leave to file the accompanying brief in this action as *amicus curiae.*

HENRY N. BENSON,
Attorney General of the State of Minnesota,
CHARLES E. PHILLIPS,
JOHN F. BONNER,
Assistant Attorneys General,
Counsel for Railroad and Warehouse Commission of the State of Minnesota as Amicus Curiae.

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 364.

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF NORTH DAKOTA, AND C. W. MCDONNELL, FAY HARDING AND BEN C. LARKIN, AS MEMBERS OF AND CONSTITUTING SAID BOARD, AND JAMES MORRIS, AS ATTORNEY GENERAL OF THE STATE OF NORTH DAKOTA, *Appellants*,

vs.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY; MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY; CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, AND FARMERS GRAIN AND SHIPPING COMPANY, *Appellees.*

BRIEF OF THE RAILROAD AND WAREHOUSE COMMISSION OF THE STATE OF MINNESOTA AMICUS CURIAE.

PRELIMINARY STATEMENT.

The Railroad and Warehouse Commission of the State of Minnesota is not concerned with the ultimate question as to whether the rates established by the order of May 8, 1929, of the board of railroad commissioners of North Dakota are lawful or unlawful. As the regulatory body of a sovereign state it is, however, vitally concerned with the question as to whether or not a federal court may suspend an intra-

state rate regularly promulgated by it, on the alleged ground that such rate is unlawful and void, under the provisions of the Interstate Commerce Commission Act, pending a hearing and determination thereof by the Interstate Commerce Commission.

STATEMENT OF THE CASE.

On May 8, 1929, the board of railroad commissioners of North Dakota fixed a scale of intrastate distributing or jobbing class rates ten per cent lower than the existing class rates to apply between all jobbing and distributing points in North Dakota and to and from such distributing and jobbing points, and to apply as maxima at intermediate points. Before the order could become effective the appellees filed a bill in equity in the district court of the United States for the district of North Dakota, alleging that the rates so established by said order will unjustly discriminate against persons and localities in interstate commerce and constitute an unreasonable burden on interstate commerce.

The bill recites the pendency of an investigation before the Interstate Commerce Commission, known as Docket 17000, Rate Structure Investigation, which has for its object the investigation of the rate structure throughout the United States and the leveling of rates and the removal of any discrimination which the Commission might find to exist between interstate and intrastate rates; the pendency before the Commission of a proceeding under Section 13 of the Interstate Commerce Act to determine whether or not the scale of class rates required by the order of May 8, 1929, will unjustly discriminate against persons and localities in interstate commerce or constitute a burden on interstate commerce.

The bill contains allegations of claimed irreparable injury and lack of adequate remedy at law and prays for an injunction restraining the operation of the order of May 8, 1929, until the Interstate Commerce Commission shall have passed on the question of whether or not the intrastate rates fixed by the order of the North Dakota commission are discriminatory and unduly burdensome on interstate commerce. An interlocutory injunction pending the final hearing in the present case is also asked (R. 1-14).

A three judge court, convened pursuant to Section 266 of the Judicial Code, granted an interlocutory injunction restraining the operation of the order of May 8, 1929,

> "until the Interstate Commerce Commission has determined, either in its Docket 17000, Part 2, now pending for decision, or in the proceeding under Section 13 of the Interstate Commerce Act which the plaintiffs herein have petitioned the Interstate Commerce Commission to institute, the question of whether the establishment and collection of the intrastate distributing or jobbing scale of class rates prescribed in said order of May 8, 1929, causes any undue or unlawful advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or in undue, unreasonable, or unjust discrimination against interstate or foreign commerce, and until the further order of this court" (R. 88).

This restraining order was made effective upon the filing by appellees of bonds aggregating $150,000.

The court in its opinion recognized that it had no jurisdiction to determine the questions of whether or not the rates promulgated by the order of the board of railroad

commissioners of North Dakota are discriminatory or unduly burdensome to interstate commerce but granted the injunction solely on the ground that irreparable injury would result to appellees if the rates are allowed to go into effect and the Interstate Commerce Commission should hold them to be unlawful.

Great Northern Railway Co., et al., vs. Board of Railroad Commissioners of North Dakota, et al., 33 Fed. (2d) 934.

STATEMENT OF FACTS.

We accept the statement of facts contained in the brief of appellants.

ARGUMENT.

This brief will be primarily confined to a consideration of appellants' 7th specification of error, to-wit:

> "VII. That the court erred in enjoining and restraining the defendants and appellants until the Interstate Commerce Commission has made a determination, either in its Docket 17000, Part 2, now pending for decision, or in the proceedings under Section 13 of the Interstate Commerce Act, or until the further order of the Court" (pp. 9-10, Appellant's Brief).

Exclusive jurisdiction ultimately to determine whether an intrastate rate is void under the provisions of the Interstate Commerce Act is vested in the Interstate Commerce Commission. We respectfully submit that the courts, both federal and state, are without jurisdiction to suspend an intrastate rate, regularly promulgated by state authority, until the Interstate Commerce Commission has determined such rate to be unlawful and void under the authority vested in it.

No relief can be granted shipper or carrier by any court in advance of such determination.

Texas & Pacific Ry. Co. vs. Abilene Cotton Oil Co., 204 U. S. 426.

Baltimore & Ohio Ry. Co. vs. Pitcairn, 215 U. S. 481.

Columbus Iron and Steel Co. vs. Kanawha & M. Ry. Co. (C. C. A., 4th Circuit), 178 Fed. 261.

Powhattan Coal & Coke Co. vs. Norfolk and Western Ry. Co. (C. C. A., 4th Circuit), 178 Fed. 266.

Houston Coal & Coke Co. vs. Norfolk and Western Ry. Co. (C. C. A., 4th Circuit), 178 Fed. 266.

Wickwire Co. vs. N. Y. Central Co. (C. C. A., 2nd), 181 Fed. 316.

Atlantic Coast Line Ry. vs. Macon Grocery Co. (C. C. A., 5th Circuit), 166 Fed. 206.

Atchison, etc., Ry. Co. vs. Foster Lbr. Co., 31 Okla. 661.

The following cases support the principle that where the Interstate Commerce Commission is charged with administrative duties no ~~justiciable~~ material question arises until the commission has acted.

Texas & Pacific Ry. Co. vs. Gulf Ry. Co., 270 U. S. 266.

Northern Pacific Ry. Co. vs. Solum, 247 U. S. 477.

Loomis vs. Lehigh Valley Ry. Co., 240 U. S. 43.

Robinson vs. B. & O. Ry. Co., 222 U. S. 506.

Western R. R. Co. vs. Georgia, 267 U. S. 493.

In *Texas & Pacific Ry. Co. vs. Abilene Cotton Oil Co., supra*, this court, after an extensive discussion and review of the authorities, held that no action for reparation could be maintained by a shipper in a state court for excessive and unreasonable freight rates exacted on interstate shipments where the rates charged were those fixed by the carrier according to the act and had not been found unreasonable by

the Interstate Commerce Commission.

Baltimore & Ohio Ry. Co. vs. United States ex rel. Pitcairn, supra, involved the right of a court to issue a writ of mandamus requiring a railroad company to cease from subjecting certain coal companies to undue and unreasonable discrimination in car service for the shipping and transporting of coal. This court held that in the absence of a finding by the Interstate Commerce Commission of discrimination the court had no jurisdiction to issue the writ. After discussing the Abilene case, the court say (page 500):

> "Nor is there anything in the contention that the decision in *Southern Ry. Co. vs. Tift*, 206 U. S. 428 [27 Sup. Ct. 709, 51 L. Ed. 1124], qualifies the ruling in the Abilene case, and is an authority supporting the right to resort to the courts in advance of action by the commission for relief against unreasonable rates or unjust discriminatory practices, which, from their nature, primarily require action by the commission."

Mr. Justice Harlan in a dissenting opinion in *Macon Grocery Co. vs. Atlantic Coast Line Railroad Company*, 215 U. S. 501, cites the case of *Baltimore & Ohio Ry. Co. vs. Pitcairn*, as authority for the proposition that *no relief* can be obtained by an original suit in any court, federal or state, from rates claimed to be discriminatory until discrimination has been found by the Interstate Commerce Commission. In this case the Circuit Court of Appeals held that as the Interstate Commerce Commission had been given exclusive jurisdiction in the first instance to determine the reasonableness of interstate rates by the Interstate Commerce Act no shipper could maintain a suit in equity to prevent the filing or enforcement of a schedule of rates or a change to unjust or unreasonable rates pending determination of

the reasonableness thereof by the Commission. The case was appealed to the Supreme Court of the United States where it was disposed of upon the ground that the Circuit Court of Appeals had no jurisdiction of the defendants. Mr. Justice Harlan dissented, taking the position that this court should have disposed of it upon the merits and held that the court had no jurisdiction to grant any relief on the ground of claimed rate discrimination until that question had been decided by the Interstate Commerce Commission. He says on page 511:

> "It seems to me that this case could have been disposed of upon the authority of *Baltimore & Ohio Railroad Co. vs. Pitcairn Coal Co.*, recently decided, *ante*, page 481, *in which the court held, in substance, that shippers, who complain of rates adopted by interstate carriers, cannot obtain relief by an original suit brought in any court, federal or state,* but must make application, at the outset, to the Interstate Commerce Commission. This, I think, is all that need have been said; for, whatever interpretation was given to the Judiciary Act of 1888 (25 Stat. 433) the Circuit Court would have been required, under the case just cited, to decline jurisdiction." (Italics ours.)

From the foregoing it is apparent that at least one member of this court has cited the case of *Baltimore & Ohio Ry. Co. vs. United States* as authority for the broad principle, which we are here contending, that no court has any jurisdiction to afford any relief on the ground of alleged discrimination in rates until the Interstate Commerce Commission has decided that the rates are discriminatory.

The precise question involved here has been presented to the Circuit Courts of Appeal of the various circuits. The

cases from the Circuit Courts of Appeal which we have cited on page 6 of this brief involved actions by shippers against railway companies to prevent the publishing of tariffs increasing interstate rates. Under the law, as it then stood, the publication and filing of a tariff by a railroad company authorized such company to charge the rates contained in the tariff until the Interstate Commerce Commission found the rates to be unreasonable. In each of these cases the Circuit Courts of Appeal held that a court of equity has no power in advance of a decision by the Interstate Commerce Commission, holding such rates to be unreasonable, to issue an injunction to prevent their going into effect.

In *Columbus Iron and Steel Co. vs. Kanawha & M. Ry. Co., supra*, the contention that unless such an injunction is granted the shipper will suffer irreparable injury was disposed of in the following language:

> "It is contended with much force that the complainant, pending a determination of the question involved herein by the Interstate Commerce Commission, will suffer irreparable injury, and that it will be compelled to suspend business, owing to the alleged unfair competition involved in the proposed rates, and that the injury thus sustained will be of such a character that a judgment for damages cannot fully compensate it for the losses it may sustain. While this may be true, nevertheless, it is the duty of the court to construe the law as it finds it. It is not within our province to repeal a law that may be objectionable. Neither can the Court exceed the limitations fixed by Congress in defining its jurisdiction" (pp. 265-266).

In *Wickwire Steel Co. vs. New York Central Ry. Co., supra*, the court, in holding adversely to the contention of a

shipper that Section 22 of the Interstate Commerce Act provided that nothing in the act contained "shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies" vests a court of equity with jurisdiction to issue such a restraining order pending the determination of the validity of the rates by the Interstate Commerce Commission, uses the following language:

> "These broad provisions would apparently justify the exercise by the court of any of its inherent powers in behalf of persons complaining of any violations by carriers of the act; but the supreme court has held in *Texas & Pacific Ry. Co. vs. Abilene Cotton Oil Co.*, 204 U. S. 426, 27 Sup. Ct. 350, 51 L. Ed. 553, that they are to be construed with reference to and limited by the powers conferred by Congress upon the Interstate Commerce Commission, for the purpose of insuring and enforcing the establishment and maintenance of reasonable and uniform rates. *In other words, they are to be construed as intended to redress wrongs that need not be complained of in the first instance to the Interstate Commerce Commission.*" (Italics ours.) (p. 318.)

THE APPELLEES AT THE TIME OF THE COMMENCEMENT OF THIS ACTION HAD A PLAIN, ADEQUATE AND COMPLETE REMEDY AT LAW IN THE STATE OF NORTH DAKOTA.

In addition to the authorities for this statement cited on page 45 of appellant's brief, we wish to invite the court's attention to the following cases:

Prentis vs. Atlantic Coast Line, 211 U. S. 210.

Gilchrist vs. Interborough Rapid Transit Co., 279 U. S. 159.

CONCLUSION.

Upon the authorities and reasons hereinbefore set forth, we respectfully submit that the court below had no authority to issue the injunction and that appellees at the commencement of this action had a plain, adequate and complete remedy at law in the state of North Dakota.

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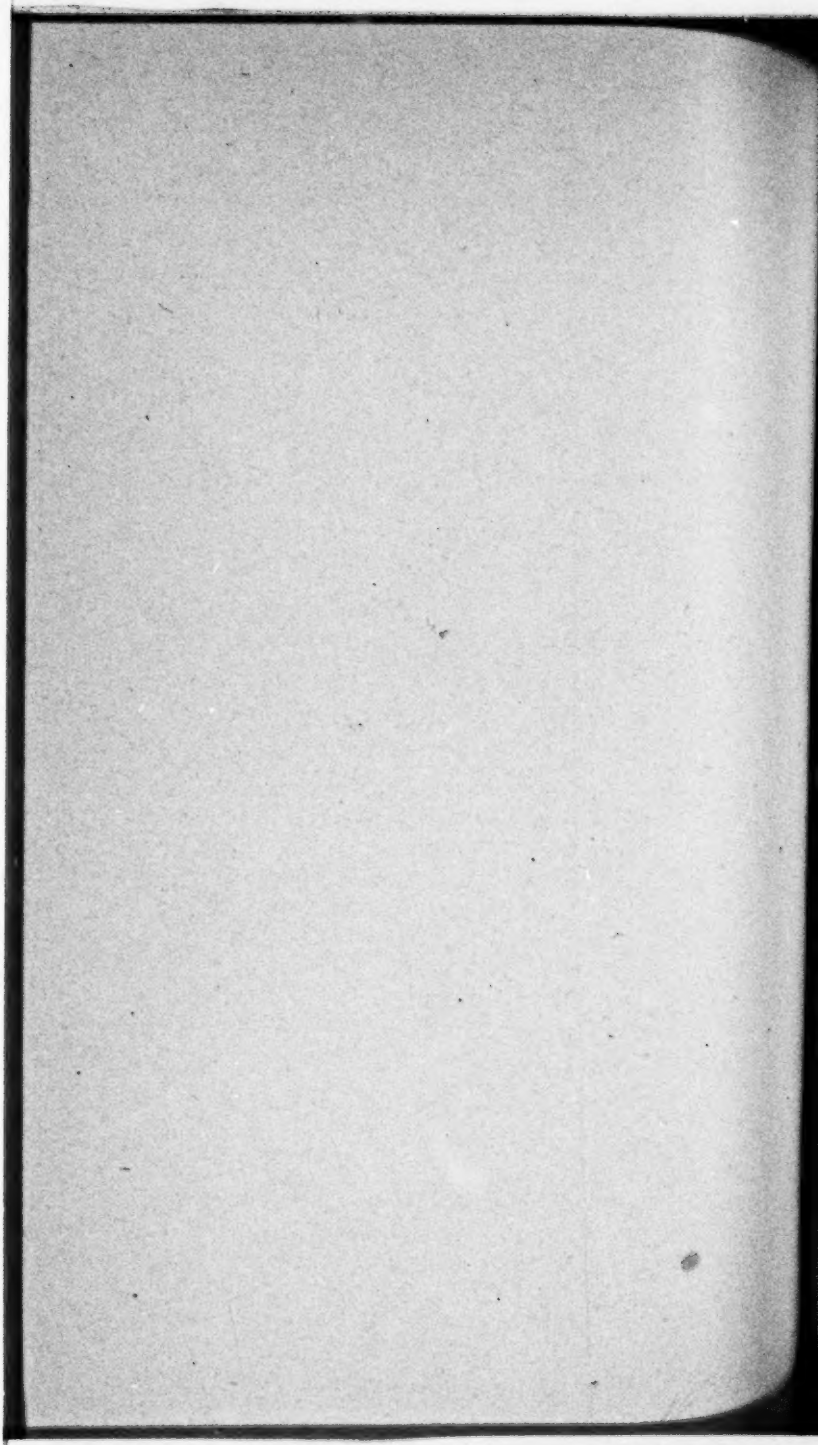

SUPREME COURT OF THE UNITED STATES.

No. 364.—October Term, 1929.

Board of Railroad Commissioners of the State of North Dakota, C. W. McDonnell, Fay Harding, et al., etc., Appellants, *vs.* Great Northern Railway Company, Northern Pacific Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, et al.	Appeal from the District Court of the United States for the District of North Dakota.

[May 19, 1930.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

On May 8, 1929, the Board of Railroad Commissioners of the State of North Dakota made an order prescribing intrastate class rates. The existing rates were reduced about ten per cent and the order was made effective on July 1, 1929. The appellees, common carriers engaged in interstate transportation and also in intrastate transportation in North Dakota, brought this suit on June 25, 1929, in the District Court to enjoin enforcement of the order pending the determination by the Interstate Commerce Commission of the question whether the intrastate rates, as thus prescribed, causes an undue or unreasonable discrimination against interstate commerce in violation of Section 13 of the Interstate Commerce Act. The District Court, composed of three Judges, as required by statute, granted an interlocutory injunction to this effect (33 Fed. (2d) 934) and the Railroad Commission of the State and the other State officials, who were defendants, have brought this appeal.

On August 26, 1920, the Interstate Commerce Commission, in a proceeding known as *Ex parte 74,* authorized a general advance in interstate freight rates throughout the United States. *Increased Rates, 1920,* 58 I. C. C. 220. The appellees then applied to the Board of Railroad Commissioners of North Dakota for authority to

make increases in the North Dakota intrastate class rates to correspond with the increases which had been made in the interstate class rates. The State Commission denied the application. Thereupon, in a proceeding (Docket No. 12,085) under Section 13 of the Interstate Commerce Act the Interstate Commerce Commission made a finding that the interstate rates established by the carriers, as a result of the decision in *Ex parte 74*, were reasonable for interstate transportation and that the failure correspondingly to increase the intrastate rates within the State of North Dakota resulted in an undue preference to the shippers of intrastate traffic within that State and in an unjust discrimination against interstate commerce. On May 3, 1921, the Interstate Commerce Commission entered an order requiring these carriers to increase the intrastate freight rates in North Dakota so as to correspond with the advances in interstate rates. *North Dakota Rates, Fares, and Charges*, 61 I. C. C. 504. These increases were made, effective May 27, 1921.

On June 5, 1922, the Board of Railroad Commissioners of North Dakota made an order reciting that the order of the Interstate Commerce Commission of May 3, 1921, practically deprived the State Commission of its power to regulate intrastate rates and that appropriate action should be taken to terminate the disability. Upon application by the State Commission, the Interstate Commerce Commission (July 22, 1922) vacated its order of May 3, 1921, in so far as it related to intrastate rates in North Dakota, stating that "the existing increased intrastate rates and charges for freight services in said State will continue in force and effect until revoked, modified or superseded by appropriate lawful proceedings before said Board" (the State Commission) "or as otherwise provided by law". The State Commission was thus left free to exercise its lawful authority over intrastate rates.

The Congress, by Joint Resolution of January 30, 1925 (43 Stat. 801), directed the Interstate Commerce Commission to make an investigation of the rate structure of common carriers in order to determine to what extent and in what manner existing rates and charges might be unreasonable or unjustly discriminatory, and to make such changes, adjustments and redistribution of rates and charges as might be found to be necessary. The Commission was required to make from time to time such decisions as it might deem

appropriate to establish a just and reasonable relation between rates upon designated classes of traffic.[1] Pursuant to this direction, the Interstate Commerce Commission on March 12, 1925, instituted the proceeding known as Docket No. 17000, "Rate Structure Investigation", and all common carriers subject to the Interstate Commerce Act were made respondents. Notice was sent to the Governor of each State and to the state regulatory commissions. The Interstate Commerce Commission thus undertook the investigation of the rate structure in the entire western district, including class rates in the region embracing the State of North Dakota. The Board of Railroad Commissioners of that State, with other state railroad commissions, have been cooperating in this investigation and the proceeding is still pending.

On May 29, 1925, the Board of Railroad Commissioners of North Dakota on its own motion began an investigation for the purpose of determining to what extent, if any, the North Dakota intrastate rates were unreasonable or unjustly discriminatory. In September, 1927, the State Commission directed that the record should be held open for further hearing after the Interstate

[1]The provision relating to the investigation is as follows:

"That the Interstate Commerce Commission is authorized and directed to make a thorough investigation of the rate structure of common carriers subject to the interstate commerce act, in order to determine to what extent and in what manner existing rates and charges may be unjust, unreasonable, unjustly discriminatory, or unduly preferential, thereby imposing undue burdens, or giving undue advantage as between the various localities and parts of the country, the various classes of traffic, and the various classes and kinds of commodities, and to make, in accordance with law, such changes, adjustments, and redistribution of rates and charges as may be found necessary to correct any defects so found to exist. In making any such change, adjustment, or redistribution the commission shall give due regard, among other factors, to the general and comparative levels in market value of the various classes and kinds of commodities as indicated over a reasonable period of years to a natural and proper development of the country as a whole, and to the maintenance of an adequate system of transportation. In the progress of such investigation the commission shall, from time to time, and as expeditiously as possible, make such decisions and orders as it may find to be necessary or appropriate upon the record then made in order to place the rates upon designated classes of traffic upon a just and reasonable basis with relation to other rates. Such investigation shall be conducted with due regard to other investigations or proceedings affecting rate adjustments which may be pending before the commission." 43 Stat. 801.

Commerce Commission rendered a decision in its Docket No. 17000. A few months later, the State Commission resumed its general investigation and a hearing was held in relation to class rates and certain other rates. This resulted in the order of May 8, 1929, now in question, reducing the existing intrastate class rates.

The appellees then filed a petition with the Interstate Commerce Commission alleging that the scale of class rates required by the State Commission would unjustly discriminate against persons and localities in interstate commerce, and would constitute an unreasonable burden on interstate commerce, in violation of Section 13 of the Interstate Commerce Act, and asked the Interstate Commerce Commission to institute a proceeding to determine whether such unjust discrimination would result and to prohibit it by prescribing the class rates to be charged by the carriers for intrastate transportation in North Dakota. Thereupon, this suit was brought. The interlocutory injunction, granted below, restrained the State Commission and other state officials from putting into effect the intrastate class rates prescribed by the order of May 8, 1929, until the Interstate Commerce Commission, either in its Docket No. 17000, or in the proceeding under Section 13 of the Interstate Commerce Act which the plaintiffs (appellees) had petitioned the Interstate Commerce Commission to institute, determined the question of unjust discrimination with respect to interstate commerce, and until the further order of the Court.

It should be observed at the outset that there is no contention on the part of the carriers that the intrastate rates fixed by the State Commission are confiscatory. There is no challenge of the authority of the State Commission under the constitution and laws of the State to prescribe these rates for intrastate traffic, or of the validity or regularity of the proceedings which resulted in the order of the State Commission, aside from the alleged effect upon interstate commerce.

The question of the control of the State, as against an objection of this sort, over rates for transportation exclusively intrastate was considered in the *Minnesota Rate Cases.* (230 U. S. 352.) The State of Minnesota had established rates for intrastate transportation throughout the State, and the complaining carriers insisted that by reason of the passage of the Interstate Commerce Act the State could no longer exercise the untrammeled statewide authority

that it had formerly enjoyed in prescribing reasonable intrastate rates, and that the scheme of rates which Minnesota had prescribed, even if found to be otherwise not subject to attack, was void because of their injurious effect upon interstate commerce. There had been no finding by the Interstate Commerce Commission of unjust discrimination against interstate commerce by reason of the intrastate rates and, reserving the question of the validity and consequence of such a finding if one were made by the Interstate Commerce Commission, the Court decided that there was no ground for invalidating the action of the State. Dealing with the interblending of operations in the conduct of interstate and local business by interstate carriers, the Court said that these considerations were for the practical judgment of Congress, and that if adequate regulation of interstate rates could not be maintained without imposing requirements as to such intrastate rates as substantially affected the former, it was for Congress, within the limits of its constitutional authority over interstate commerce, to determine the measure of the regulation it should apply. It was not the function of the Court to provide a more comprehensive scheme of regulation than Congress had decided upon, nor, in the absence of Federal action, to deny effect to the laws of the State enacted within the field which it was entitled to occupy until its authority was limited through the exertion by Congress of its paramount constitutional power. On the assumption that Section 3 of the Interstate Commerce Act should be construed as applicable to unreasonable discriminations between localities in different States, as well when arising from an intrastate rate as compared with an interstate rate as when due to interstate rates exclusively, the Court was of the opinion that the controlling principle governing the enforcement of the act should be applied to such cases and that the question of the existence of such a discrimination would be primarily for the investigation and determination of the Interstate Commerce Commission and not for the courts. (*Id.* p. 419.)

The controlling principle, thus invoked, was derived from a consideration of the nature of the question and of the inquiry and action required for its solution. The inquiry would necessarily relate to technical and intricate matters of fact, and the solution of the question would demand the exercise of sound administrative discretion. The accomplishment of the purpose of

Congress could not be had without the comprehensive study of an expert body continuously employed in administrative supervision. Only through the action of such a body could there be secured the uniformity of ruling upon which appropriate protection from unreasonable exactions and unjust discriminations must depend. (*Id.* pp. 419, 420. See *Great Northern Railway Company* v. *Merchants Elevator Company*, 259 U. S. 285, 291.)

The application of this principle had frequent illustration before the question arose as to unjust discriminations against interstate commerce through the fixing of intrastate rates. In *Texas & Pacific Railway Company* v. *Abilene Cotton Oil Company* (204 U. S. 426), the Court decided that a shipper could not maintain an action because of the exaction of an alleged unreasonable rate on interstate shipments, when the rate had been duly filed and published by the carrier and had not been found to be unreasonable by the Interstate Commerce Commission. The Court found an indissoluble unity between the provision for the maintenance of rates as established in accordance with the statute and the prohibitions against preferences and discriminations, and declared that to maintain the just relation which the statute was intended to conserve it was essential that there should be uniformity of decision and that redress should be sought primarily through the administrative powers entrusted to the Interstate Commerce Commission. In *Baltimore & Ohio Railroad Company* v. *United States ex rel. Pitcairn Coal Company* (215 U. S. 481), complaint was made by the coal company of the method of distribution of coal cars, which was said to amount to an unjust discrimination. The Court considered the controversy to be controlled by the decision in the *Abilene* case, *supra*, and that the grievances of which complaint was made were primarily within the administrative competency of the Interstate Commerce Commission. The Court said that the amendments of 1906 of the Interstate Commerce Act rendered, if possible, more imperative the construction which had been given to the act in this respect. After adverting to the case of *Interstate Commerce Commission* v. *Illinois Central Railroad Company* (215 U. S. 452), the Court again pointed out "the destructive effect upon the system of regulation adopted by the Act to Regulate Commerce," if it were construed as "giving authority to the courts, without the preliminary action of the commission, to

consider and pass upon the administrative questions which the statute has primarily confided to that body". (215 U. S. p. 496.) The question was again considered in *Robinson* v. *Baltimore & Ohio Railroad Company* (222 U. S. 506), where the Court held that no action for reparation for discriminatory exactions for freight payments could be maintained in any Court, Federal or state, in the absence of an appropriate finding and order of the Interstate Commerce Commission. Referring to the *Abilene* case, *supra*, the Court said, "It is true that . . . in that case the complaint against the established rate was that it was unreasonable, while here the complaint is that the rate was unjustly discriminatory. But the distinction is not material". (*Id.* p. 511.)[2]

The grounds for invoking this principle of preliminary resort to the Interstate Commerce Commission are even stronger when the effort is made to invalidate intrastate rates upon the ground of unjust discrimination against interstate commerce. Not only are the questions as to the effect of intrastate rates upon interstate rates quite as intricate as those relating to discrimination in interstate rates, not only is there at least an equal need for the comprehensive, expert and continuous study of the Interstate Commerce Commission, and for the uniformity obtainable only through its action, but in addition there is involved a prospective interference with State action within its normal field, in relation to the domestic concern of transportation exclusively intrastate. The Court found no warrant for the contention that Congress in enacting the Interstate Commerce Act intended that there should be such an interference before the fact of unjust discrimination had been established by competent inquiry on the part of the administrative authority to which Congress had entrusted the solution of that class of questions.

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[2]See, also, United States *v.* Pacific & Arctic Co., 228 U. S. 87, 107, 108; Mitchell Coal Co. *v.* Pennsylvania R. R. Co., 230 U. S. 247, 259; Texas & Pacific Railway Co. *v.* American Tie & Lumber Co., 234 U. S. 138, 147; Pennsylvania R. R. Co. *v.* Puritan Coal Co., 237 U. S. 121, 131; Pennsylvania R. R. Co. *v.* Clark Coal Co., 238 U. S. 456, 469; Northern Pacific Railway Co. *v.* Solum, 247 U. S. 477, 483; Director General of Railroads *v.* Viscose Company, 254 U. S. 498, 504; Great Northern Railway Co. *v.* Merchants Elevator Company, 259 U. S. 285, 291, 295; Terminal R. R. Ass'n *v.* United States, 266 U. S. 17, 31; Western & Atlantic Railroad *v.* Georgia Public Service Commission, 267 U. S. 493, 497.

What was lacking in the *Minnesota Rate Cases, supra,* had been supplied in the *Shreveport Case* (234 U. S. 342).[3] There, the Interstate Commerce Commission had found that there was an unjust discrimination arising out of the relation of intrastate rates, maintained under State authority, to interstate rates which had been upheld as reasonable. The Court decided that Congress in exercising its constitutional authority could correct the evil of this discrimination against interstate commerce and that in so doing Congress was entitled to secure the maintenance of its own standard of interstate rates. Having this power, Congress could provide for its exercise through the aid of a subordinate body. The removal of the discrimination was within the authority granted to the Interstate Commerce Commission and the decision rested upon the ground that this authority had been exercised. (*Id.* pp. 357, 358.) See, also *American Express Company* v. *Caldwell,* 244 U. S. 617, 625; *Illinois Central Railroad Company* v. *State Public Utilities Commission,* 245 U. S. 493, 506; *Arkansas Railroad Commission* v. *Chicago R. I. & P. R. R. Co.,* 274 U. S. 597, 599.

In the Transportation Act, 1920 (41 Stat. 484) Congress enacted express provisions with respect to intrastate rates, regulations and practices. (*Id.* Sec. 416.) Amending Section 13 of the Act to Regulate Commerce, Congress authorized the Interstate Commerce Commission to confer with state regulatory bodies with respect to "the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission", and to hold joint hearings. It was provided that whenever in any such investigation, after full hearing, the Commission finds that any rate, regulation or practice "causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful", the Commission shall prescribe the rate, regulation or practice "thereafter to be observed, in such manner as, in its judgment, will remove" the discrimination. The order of the Commission is to bind the carriers, parties to the proceeding, "the law

[3]Houston, East and West Texas Railway Company v. United States, 234 U. S. 342.

of any State or the decision or order of any State authority to the contrary notwithstanding".[4]

There can be no doubt that Congress thus intended to recognize and incorporate in legislative enactment the principle of the *Shreveport Case, supra.*[5] We find no basis for the conclusion that

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[4]The text of the provisions thus added to Section 13 is as follows:

"Sec. 13. . . .

"(3) Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this Act with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this Act.

"(4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

[5]In presenting these amendments to the Committee of the Whole House, Mr. Esch, Chairman of the Committee on Interstate and Foreign Commerce of the House of Representatives, said:

"We also provide for the enactment into law of what is popularly known as the decision of the Supreme Court in the Shreveport case. Where intrastate rates constitute an undue burden, advantage, preference or prejudice against interstate rates, such rates are declared to be unlawful. We have

it was the purpose of Congress to interdict a state rate, otherwise lawfully established for transportation exclusively intrastate, before appropriate action by the Interstate Commerce Commission. On the contrary, Congress sought to provide a more satisfactory administrative procedure which would elicit the cooperation of the

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incorporated into law the decision of the court. When by reason of the low level of the intrastate rates an undue burden is cast upon the interstate traffic the citizens and the shippers of other States are compelled to pay higher interstate freight rates than they would have had to pay had that State enacted or put into force and effect proper intrastate rates. We give this power of determination to the Interstate Commerce Commission, but in order that the State commissions may have a proper hearing we provide that the State commissions may, to use a phrase of the street, 'sit in' with the Interstate Commerce Commission. It can sit with the Interstate Commerce Commission; it can hear the testimony, and can present its full case, through its legally constituted authority. It can present the full case, but the final adjudication is to rest with the Interstate Commerce Commission and not with the State regulatory body. We believe that this getting together of the interstate and State regulatory bodies will lessen the number of Shreveport cases, better the feeling between the interstate and the State commissions, and promote the commercial interests of the country.'' Cong. Rec., 66th Cong., 1st Sess., Vol. 58, pt. 8, p. 8317.

Senator Cummins, Chairman of the Committee on Interstate Commerce of the Senate, made the following statement to the Committee of the Whole of the Senate:

''I need not follow that case'' (the Shreveport case) ''in all its phases; but it finally reached the Supreme Court of the United States, and the Supreme Court held that the authority of the Federal Government as it could be vested in the Interstate Commerce Commission extended to the removal of a discrimination between the interstate rates and the intrastate rates, but no authority had been given by Congress to the commission to declare what the intrastate rate should be in comparison with the interstate rate. . . .

''The committee has attempted simply to express the decisions of the Supreme Court of the United States. We have not attempted to carry the authority of Congress beyond the exact point ruled by the Supreme Court in the cases to which I have referred; and the only thing we have done in the matter has been to confer upon the Interstate Commerce Commission the authority to remove the discrimination when established in a proper proceeding before that body—an authority which it does not now have. . . .

''The Supreme Court held that Congress had not conferred upon the Interstate Commerce Commission the right to prescribe a rate in the stead of one which had been condemned; but so far as the condemnation of the rates is concerned, the power of the Interstate Commerce Commission is already ample, and it has succeeded in one way or another in removing the discriminations which have come under its notice without the statute which we now propose.'' Cong. Rec., 66th Cong., 2d Sess., Vol. 59, pt. 1, pp. 142, 143.

State regulatory bodies, and insure a full examination of all the questions of fact which such bodies might raise, before any finding was made in such a case as to unjust discrimination against interstate commerce or any order was entered superseding the rate authorized by the State. In sustaining the authority of the Commission under Section 13 as thus amended, the Court said in *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy Railroad Company* (257 U. S. 563, 590, 591): "It is said that our conclusion gives the Commission unified control of interstate and intrastate commerce. It is only unified to the extent of maintaining efficient regulation of interstate commerce under the paramount power of Congress. It does not involve general regulation of intrastate commerce. Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce, and must leave appropriate discretion to the state authorities to deal with intrastate rates as between themselves on the general level which the Interstate Commerc Commission has found to be fair to interstate commerce". See *Arkansas Railroad Commission* v. *Chicago, R. I. & P. R. R. Co., supra.*

When, before the amendments of 1910 of the Interstate Commerce Act, the question arose as to the propriety of judicial action in granting injunctions against the maintenance of interstate rates, filed and published by carriers as provided by law, pending the decision of the Interstate Commerce Commission whether such rates were unreasonable or unjustly discriminatory, there was a conflict of opinion in the lower Federal courts, but the weight of decision was that such relief, although temporary in character, could not be granted prior to an appropriate finding by the Interstate Commerce Commission, and this ruling accorded with the principle declared by this Court in the *Abilene* and other cases, *supra.*[6] Congress, in 1910, authorized the Interstate Commerce Commission, on the filing of rates by interstate carriers with the Commission, to suspend the operation of the rates for a stated

[6]See Atlantic Coast Line R. R. Co. v. Macon Grocery Co., 166 Fed. 206; Columbus Iron & Steel Company v. Kanawha & M. Ry. Co., 178 Fed. 261; Wickwire Steel Company v. New York Central R. R. Co., 181 Fed. 316. Compare Jewett Bros. v. Chicago, M. & St. P. Ry. Co., 156 Fed. 160; Kiser Company v. Central of Georgia R. R. Co., 158 Fed. 193; 236 Fed. 573; Northern Pacific R. R. Co. v. Pacific Coast Lumber Mfrs Assn., 165 Fed. 1; Great Northern Ry. Co. v. Kalispell Lumber Co., 165 Fed. 25.

period, and this provision has been continued in later legislation. Interstate Commerce Act, Sec. 15 (7); 36 Stat. 552; 41 Stat. 486, 487. This power of suspension was entrusted to the Commission only. There is no similar provision for the suspension of intrastate rates established by state authority.

It is said that the interlocutory injunction, granted below, was in aid of the proceedings pending before the Interstate Commerce Commission. But the injunction necessarily has the effect of preventing the State from enforcing the rates it has prescribed, which are lawful rates until the Interstate Commerce Commission finds that they cause an unjust discrimination against interstate commerce. A judicial restraint of the enforcement of intrastate rates, although limited to the pendency of proceedings before the Interstate Commerce Commission, is none the less essentially a restraint upon the power of the State to establish rates for its internal commerce, a power the exercise of which in prescribing rates otherwise valid is not subject to interference upon the sole ground of injury to interstate commerce, save as Congress has validly provided. Congress has so provided only in the event that, after full hearing in which the State authorities may participate, the Interstate Commerce Commission finds that unjust discrimination is created. Congress forbids the unjust discrimination through the fixing of intrastate rates but entrusts the appropriate enforcement of its prohibition primarily to its administrative agency.

It is urged that the restraining power of the Court is needed to prevent irreparable injury. But, in this class of cases, the questions whether there is injury, and what the measures shall be to prevent it, is committed for its solution preliminarily to the Interstate Commerce Commission.

For these reasons, the order of the District Court is reversed and the cause remanded with direction to dismiss the bill of complaint.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.